

Agency 47



Kansas Administrative Regulations Kansas Department of Health and Environment

Notice to Reader

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Where possible KDHE will append changed regulations to the appropriate article. Once again, the lack of any attachments should not be construed as meaning there are no revisions.

Nothing contained herein should be construed as legal advice by KDHE. If you are not an attorney, you should secure competent counsel to interpret the regulations and advise you.

Office of Public Information
Kansas Department of Health & Environment

Notes

The *Kansas Register* notes the following changes:

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Mined-Land Conservation and Reclamation Board

Editor's Note:

The Mined-Land Conservation and Reclamation Board was abolished on July 1, 1988. Powers, duties and functions under the Kansas Corporation Commission were transferred to the Dept. of Health and Environment. See L. 1988, Ch. 192, Sec. 1.

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Article 1.—GENERAL

47-1-1. **Title.** These rules shall be known as rules of practice and procedures of the surface mining section of the Kansas department of health and environment. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended Feb. 11, 1991.)

47-1-2. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-1-3. **Communication.** All applications for surface mining permits required to be filed with the secretary shall be filed in the office of the surface mining section within the time limits for such filing. All documents so addressed or filed shall be deemed to be officially received by the secretary when actually delivered at the office of the surface mining section. All applications shall

be accompanied by appropriate fees. (Authorized by K.S.A. 1989 Supp. 49-405, 49-406 as amended by L. 1990, Ch. 194, sec. 1; implementing K.S.A. 1989 Supp. 49-405; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended Feb. 11, 1991.)

47-1-4. **Sessions.** (a) Meetings will be scheduled as needed by the chief of the surface mining section pursuant to the notice requirements of K.A.R. 47-1-10.

(b) Special meetings will be called by the chief of the surface mining section with the approval of the secretary.

(c) An operator with communications and documents requiring discussion or the secretary's approval shall be notified of the meetings.

(d) These meetings shall be open to the operators and the public. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; amended May 1, 1986; amended Feb. 11, 1991.)

47-1-5 and 47-1-6. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-1-7. (Authorized by K.S.A. 1980 Supp. 49-405, 49-407, 49-416a; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-1-8. **Petitions to initiate rulemaking.** (a) Any person may petition the secretary to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the state act. The petition shall be submitted to the chief of the surface mining section.

(b) The petition shall be a concise statement of the facts, technical justification, and law which requires issuance, amendment, or repeal of a regulation and shall indicate whether the petitioner desires a public hearing.

(c) Whether the petition sets forth facts, technical justification, and law which may provide a reasonable basis for conducting a hearing to consider issuance, amendment, or repeal of a regulation shall be determined by the secretary or secretary's designee. Facts, technical justification or law previously considered in a petition or in rulemaking on the same issue shall not provide a reasonable basis.

(d) If the secretary or secretary's designee determines that the petition has a reasonable basis, a notice shall be published seeking comments from the public on the proposed change. A public hearing, an investigation or other necessary action may be taken by the secretary or secretary's designee to determine whether the petition should be granted.

(e) A written decision either granting or denying the petition shall be issued by the secretary or secretary's designee within 90 days of its receipt by the surface mining section.

(1) If the petition is granted, the rulemaking process shall be initiated by the secretary.

(2) If the petition is denied, the petitioner shall be notified in writing by the secretary, setting forth the reasons for denial. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

47-1-9. **Notice of citizen suits.** (a) A person who intends to initiate a civil action on their

own behalf under K.S.A. 1989 Supp. 49-426(a)(2) shall give notice of this intent as follows:

(1) by certified mail to the chief of the surface mining section and the secretary.

(2) a copy of the notice by first class mail to the field office director of the office of surface mining, United States department of the interior.

(3) by certified mail to the alleged violator if the complaint alleges a violation of the state act or any regulation, order, or permit issued under the state act.

(b) Service of such notice shall be complete upon receipt by person being notified.

(c) A person giving notice regarding an alleged violation shall state, the following to the extent known:

(1) Sufficient information to identify the provision of the state act, rule or regulation, order, or permit allegedly violated;

(2) the act or omission constituting the alleged violation;

(3) the name, address, and telephone numbers of the person or persons responsible for the alleged violation;

(4) the date, time, and location of the alleged violation;

(5) the name, address, and telephone number of the person giving notice; and

(6) the name, address, and telephone number of legal counsel, if any, of the person giving notice.

(d) A person giving notice of an alleged failure by the secretary to perform a mandatory act or duty under the state act shall state, the following to the extent known:

(1) the provision of the state act containing the mandatory act or duty allegedly not performed;

(2) sufficient information to identify the omission constituting the alleged failure to perform a mandatory act or duty;

(3) the name, address, and telephone number of the person giving notice; and

(4) the name, address, and telephone number of legal counsel, if any, of the person giving notice.

(Authorized by K.S.A. 1989 Supp. 49-405, 49-426; implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

47-1-10. **General notice requirement.** (a) Notice of scheduled surface mining section meetings shall be published in:

(1) The Kansas Register; and

(2) a newspaper of general circulation in the

locality of the surface mining section's meeting place.

(b) The notice required by subsection (a) of this regulation shall be published at least 10 days before the date of the meeting, except as otherwise provided in this regulation.

(c) If a special meeting is deemed necessary and if time will not allow compliance with subsections (a) and (b) of this regulation, notice of such a special meeting shall be published as soon as possible in a newspaper of general circulation in the locality of the meeting place for that special meeting. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1984; amended Feb. 11, 1991.)

47-1-11. Permittee; preparation and submission of reports. The secretary or secretary's designee may require any permittee to:

- (a) establish and maintain appropriate records;
- (b) make appropriate monthly reports;
- (c) install, use, and maintain any necessary monitoring equipment or methods;
- (d) evaluate results in accordance with those methods, at the locations, intervals, and in the manner prescribed; and
- (e) provide any other information relative to surface coal mining and reclamation operations that is deemed reasonable and necessary. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1985; amended Feb. 11, 1991.)

Article 2.—MEANING OF TERMS

47-2-1. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-2 to 47-2-6. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-7. (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980; revoked May 1, 1986.)

47-2-8 to 47-2-13. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-14. **“Complete and accurate appli-**

cation” defined: “Complete and accurate application” means an application, consisting of documents and other information required to be filed with the department, which contains all information required under state law and these rules and regulations. (Authorized by K.S.A. 1989 Supp. 49-405, and K.S.A. 1989 Supp. 49-406; as amended by L. 1990, Ch. 194, sec. 1; implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1980; amended Feb. 11, 1991.)

47-2-15 and 47-2-16. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-17. (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980; revoked May 1, 1986.)

47-2-18 to 47-2-20. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-21. **Employee defined.** Employee means any person employed by the department of health and environment, who performs any function or duty under the state act, or consultants who perform decision-making functions under the authority of state law or these rules and regulations. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-404; effective May 1, 1980; amended May 1, 1983; amended Feb. 11, 1991.)

47-2-22 to 47-2-43 (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-44. (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980; revoked May 1, 1986.)

47-2-45 to 47-2-52. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-53. **“Regulatory authority” or “state regulatory authority” defined.** “Regulatory authority” or “state regulatory authority” means the department of health and environment, surface mining section, or the secretary's designee. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405 and

K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991.)

47-2-53a. **“Regulatory program” defined.** “Regulatory program” means the state act and the rules and regulations adopted by the department of health and environment and approved by the United States office of surface mining. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1986; amended Feb. 11, 1991.)

47-2-54 to 47-2-57. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-58. **“Significant, imminent environmental harm to land, air or water resources” defined.** “Significant, imminent environmental harm to land, air or water resources” includes the following elements:

(a) An environmental harm is an adverse impact on land, air or water resources which resources include, but are not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice or violation exists which is causing harm or may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under these rules and regulations and the state law.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable. (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980.)

47-2-59 to 47-2-63. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-64. **“State act” defined.** “State act” means the mined-land conservation and reclamation act. (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980.)

47-2-65 and 47-2-66. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-67. **“Surety bond” defined.** “Surety

bond” means an indemnity agreement, in a sum certain payable to the department of health and environment, surface mining section and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Kansas. (Authorized by K.S.A. 1989 Supp. 49-405, and K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1980; amended Feb. 11, 1991.)

47-2-68 to 47-2-73. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-2-74. **“Public road” defined.** “Public road” means any thoroughfare open to the public which has been and is being used by the public for vehicular travel. (Authorized by K.S.A. 1980 Supp. 49-405, 49-405b; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981.)

47-2-75. **Definitions; adoption by reference.** (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed on July 1, 1990, with exceptions as indicated:

(1) Definitions, 30 CFR 700.5, except:

(2) “Regulatory authority” and “state regulatory authority” are defined in K.A.R. 47-2-53;

(3) “Surface coal mining operations” is defined in K.S.A. 1989 Supp. 49-403(r); and

(4) “Surface coal mining and reclamation operations” is defined in K.S.A. 1989 Supp. 49-403(q).

(5) The following shall be deleted from the definition of “anthracite”:

“Notices of changes made to this publication will be periodically published by the Office of Surface Mining in the Federal Register. This ASTM standard is on file and available for inspection at the OSM office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office and Field Office, and at the central office of the applicable State Regulatory Authority, if any. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication

will also be on file for public inspection at the Federal Register library, 1100 L St., N.W. Washington, D.C. Incorporation by reference provisions approved by the Director of the Federal Register February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981."

(5) "Regulatory program" is defined in K.A.R. 47-2-53a.

(6) "Director" means the director, office of surface mining reclamation and enforcement in K.A.R. 47-3-42(a) (36), adopting by reference 30 CFR 785.13; All other references to the director shall be replaced by the secretary of the department of health and environment.

(7) "Department" means the Kansas department of health and environment.

(8) "Secretary" means secretary of the Kansas department of health and environment.

(b) Definitions, 30 CFR 701.5, except:

(1) "Imminent danger to the health and safety of the public" is defined in K.S.A. 1989 Supp. 49-403(m);

(2) "Operator" is defined in K.S.A. 1989 Supp. 49-403(c);

(3) "Permit" is defined in K.S.A. 1989 Supp. 49-403(n);

(4) "Permit area" is defined in K.S.A. 1989 Supp. 49-403(o);

(5) "Significant, imminent environmental harm to land, air or water resources" is defined in K.A.R. 47-2-58; and

(6) The following federal definitions are deleted entirely:

(A) "Agricultural activities or farming";

(B) "Alluvial valley floors";

(C) "Arid and semiarid area";

(D) "Essential hydrologic functions";

(E) "Flood irrigation";

(F) "Materially damage the quality and quantity of water";

(G) "Rangeland";

(H) "Special bituminous coal mines";

(I) "Subirrigation";

(J) "Undeveloped rangeland"; and

(K) "Upland areas."

(c) Definitions, 30 CFR 705.5, except:

(1) "Employee" is defined in K.A.R. 47-2-21; and

(2) "State regulatory authority" is defined in K.A.R. 47-2-53.

(d) All definitions, 30 CFR 773.5.

(e) Definitions, 30 CFR 846.5, except

(1) "Federal program" shall be replaced by state program.

(2) "Section 521" shall be replaced by K.S.A. 1989 Supp. 49-405.

(3) "Act" shall be replaced by state act.

(4) "Secretary" shall be replaced by secretary of the Kansas department of health and environment.

(5) "Section 518(b)" shall be replaced by K.S.A. 1989 Supp. 49-416a.

(6) "Section 703" shall be replaced by 77-501 *et seq.*

(7) "Federal lands program. Federal enforcement pursuant to section 502 of the act and Federal enforcement of a state program pursuant to Section 521 of the act" shall be deleted. (Authorized by K.S.A. 1989 Supp. 49-404, 49-405; implementing K.S.A. 49-401 *et seq.*; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991.)

Article 3.—APPLICATION FOR MINING PERMIT

47-3-1. **Application for mining permit.** Each person who conducts or expects to conduct surface or underground coal mining and reclamation operations shall file an original and four copies of a complete and accurate application for a permit for those operations with the secretary at least 90 days prior to permit decision. (Authorized by K.S.A. 1989 Supp. 49-405, and K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; implementing K.S.A. 1989 Supp. 49-405; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1975; amended May 1, 1980; amended Feb. 11, 1991.)

47-3-2. **Application for mining permit; adoption by reference.** (a) A permit application submitted with a request for variances from the applicable regulations shall contain an outline of the proposed variances. This outline shall be indexed to the regulations and be placed at the beginning of the application documents.

(b) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary, as they existed on July 1, 1990, except as otherwise indicated:

(1) Format and contents, 30 CFR 777.11;
 (2) Reporting of technical data, 30 CFR 777.13;

(3) Maps and plans; general requirements, 30 CFR 777.14. The phrase "in accordance with section 710.12 of this chapter" shall be deleted; and

(4) Completeness, 30 CFR 777.15.

(c) The following terms shall be replaced whenever they appear:

(1) "This chapter" or "this subchapter" shall be replaced by "these rules and regulations."

(2) "Parts 778, 779, and 780 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(1) to (35), inclusive."

(3) "Part 785 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(36) to (41), inclusive."

(4) "Parts 778, 783, and 784 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(1) to (8), inclusive, and K.A.R. 47-10-1." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective May 1, 1980; amended May 1, 1986; amended Feb. 11, 1991.)

Editor's Note:

Former Regulation 47-3-2 revoked May 1, 1980.

47-3-3. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; revoked May 1, 1986.)

Editor's Note:

Former Regulation 47-3-3 revoked May 1, 1980.

47-3-3a. **Application for mining permit; maps.** (a) Any maps, plans, and cross sections required for a permit application shall be certified by a qualified, licensed engineer and shall be updated as required by the secretary or secretary's designee.

(b) Any change in a facility or feature that would be caused by the proposed mining operations shall be shown in the maps and plans accompanying the permit application.

(1) A color code, or other method approved in writing by the secretary or secretary's designee, shall be used to indicate critical features of the permit area as follows:

(A) green for coal removal;

(B) red for the boundary of the land affected, including access roads and haulageways;

(C) brown access roads and haulageways; and

(D) blue for watercourses, impoundments, drainageways, and other water areas.

(2) A color code, or other method approved, in

writing, by the secretary or secretary's designee shall be used to indicate critical features of any reclamation plan as follows:

(A) green for areas of proposed grassland;

(B) red for the permit boundaries;

(C) brown for any roads to be left through the disturbed area;

(D) blue for proposed water impoundment and drainage;

(E) yellow for proposed cropland; and

(F) orange for proposed woodland. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1, K.S.A. 1989 Supp. 49-410; effective May 1, 1986; amended Feb. 11, 1991.)

47-3-4. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; revoked May 1, 1986.)

47-3-5 to 47-3-20. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-3-21. (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980; revoked May 1, 1986.)

47-3-22 to 47-3-39. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-3-40. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; amended, E-81-80, Oct. 8, 1980; amended May 1, 1981; revoked May 1, 1986.)

47-3-41. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-3-42. **Application for mining permit; adoption by reference.** (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary as they existed on July 1, 1990, except as otherwise indicated:

(1) Identification of interests, 30 CFR 778.13;

(2) Violation information, 30 CFR 778.14;

(3) Right of entry, 30 CFR 778.15;

- (4) Status of unsuitability claims, 30 CFR 778.16;
 - (5) Permit term information, 30 CFR 778.17(a);
 - (6) Insurance, 30 CFR 778.18;
 - (7) Newspaper advertisement and proof of publication, 30 CFR 778.21;
 - (8) Facilities or structures used in common, 30 CFR 778.22;
 - (9) Responsibilities, 30 CFR 779.4. The phrase "this part" shall be replaced by "K.A.R. 47-3-42(a)(9) to (17), inclusive";
 - (10) General requirements, 30 CFR 779.11;
 - (11) General environmental resources information, 30 CFR 779.12;
 - (12) Climatological information, 30 CFR 779.18;
 - (13) Vegetation information, 30 CFR 779.19;
 - (14) Soil resources information, 30 CFR 779.21;
 - (15) Land-use information, 30 CFR 779.22. The phrase "this part" shall be replaced by "K.A.R. 47-3-42(a)(9) to (17), inclusive";
 - (16) Maps: general information, 30 CFR 779.24;
 - (17) Cross sections, maps, and plans, 30 CFR 779.25;
 - (18) Operation plan: general requirements, 30 CFR 780.11;
 - (19) Operation plan: existing structures, 30 CFR 780.12;
 - (20) Operation plan: blasting, 30 CFR 780.13;
 - (21) Operation plan: maps and plans, 30 CFR 780.14;
 - (22) Air pollution control plan, 30 CFR 780.15;
 - (23) Fish and wildlife plan, 30 CFR 780.16;
 - (24) Reclamation plan: general requirements, 30 CFR 780.18;
 - (25) Hydrologic information, 30 CFR 780.21;
 - (26) Geologic information, 30 CFR 780.22;
 - (27) Reclamation plan: postmining land uses, 30 CFR 780.23;
 - (28) Reclamation plan: ponds, impoundments, banks, dams, and embankments, 30 CFR 780.25;
 - (29) Reclamation plan: surface mining near underground mining, 30 CFR 780.27;
 - (30) Diversions, 30 CFR 780.29;
 - (31) Protection of public parks and historic places, 30 CFR 780.31;
 - (32) Relocation or use of public roads, 30 CFR 780.33;
 - (33) Disposal of excess spoil, 30 CFR 780.35;
 - (34) Transportation facilities, 30 CFR 780.37;
 - (35) Support facilities, 30 CFR 780.38;
 - (36) Experimental practices mining, 30 CFR 785.13;
 - (37) Prime farmlands, 30 CFR 785.17. The last sentence in 30 CFR 785.17(c)(1)(i) shall be deleted;
 - (38) Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining operations, 30 CFR 785.18;
 - (39) Augering, 30 CFR 785.20;
 - (40) Coal preparation plants not located within the permit area of a specified mine, 30 CFR 785.21;
 - (41) In situ processing activities, 30 CFR 785.22;
 - (42) Public participation in permit processing, 30 CFR 773.13. The phrase "with section 503(a)(6) or section 504(h) of the act or" shall be deleted;
 - (43) Review of permit applications, 30 CFR 773.15;
 - (44) Permit issuance and right of renewal, 30 CFR 773.19. The phrase, "unless the requirements of 778.17 of this chapter are met" shall be deleted;
 - (45) Improvidently issued permits; general procedure, 30 CFR 773.20;
 - (46) Improvidently issued permits; rescission procedures, 30 CFR 773.21;
 - (47) Applicability, 30 CFR 701.11 subsection (e) only, subsections (a), (b), (c), (d) and (f) shall be deleted; and
 - (48) Regulatory coordination with requirements under other laws, 30 CFR 773.12.
- (b) The following terms shall be replaced wherever they appear:
- (1) "Subchapter K" or "subchapter K of this chapter" shall be replaced by "K.A.R. 47-9-1."
 - (2) "This chapter," "this subchapter" or "subchapter G of this chapter" shall be replaced by "these rules and regulations."
 - (3) "Act" shall be replaced by "state act."
 - (4) "Section 515," "section 515(b)," or "section 515(b)(22)" shall be replaced by "K.S.A. 1989 Supp. 49-405a, 49-408 to 49-413, inclusive, and 49-429."
 - (5) "Subchapter J of this chapter" or "part 800 of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations."
 - (6) "Section 502" and "section 508" shall be replaced by "K.S.A. 1989 Supp. 49-406."

(7) "Section 515(b)(16)" or "section 516" shall be replaced by "K.S.A. 1989 Supp. 49-429."

(8) "Subchapter R of this chapter" shall be replaced by "the office."

(9) "Subchapter B of this chapter" shall be replaced by "K.A.R. 47-9-4."

(10) "Part 775 of this chapter" shall be replaced by "K.S.A. 1989 Supp. 49-407(d), 49-416a, 1989 Supp. 49-422a, and article 4 of chapter 47 of the Kansas administrative rules and regulations."

(11) "Parts 762, 764, and 769 of this chapter" or "parts 764 and 769 of this chapter" shall be replaced by "K.A.R. 47-12-4."

(12) "Part 816" or "part 816 of this chapter" shall be replaced by "K.A.R. 47-9-1(c)."

(13) "Section 775.13" shall be replaced by "K.S.A. 1989 Supp. 49-422a."

(14) "Section 775.11" shall be replaced by "K.S.A. 1989 Supp. 49-407(d), 49-416a, and article 4 of chapter 47 of the Kansas administrative regulations."

(15) "Part 785 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(36) to (41), inclusive." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-406, as amended by L. 1990, Ch. 194, sec. 1, 49-407, 49-427; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991.)

Article 4.—PUBLIC HEARINGS

47-4-1 to 47-4-8. (Authorized by K.S.A. 1980 Supp. 49-405; effective, E-81-3, Jan. 10, 1980; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-4-9. (Authorized by K.S.A. 1980 Supp. 49-404, 49-407; effective, E-81-3, Jan. 10, 1980; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-4-10 to 47-4-13. (Authorized by K.S.A. 1980 Supp. 49-405; effective, E-81-3, Jan. 10, 1980; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-4-14. (Authorized by K.S.A. 49-404, 49-405; implementing K.S.A. 49-404, 49-405, 49-407, 49-416a; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986, revoked Feb. 11, 1991.)

47-4-14a. **Administrative hearing procedure.** (a) The following shall be the regulations which govern the procedure used in all administrative hearings resulting from:

(1) petitions for review of proposed civil penalty assessments issued by the secretary;

(2) applications for review of notices of violation and orders of cessation or modification, vacation or termination of them;

(3) applications for review of the secretary's decision to disapprove, suspend, or revoke a permit;

(4) applications for temporary relief;

(5) applications for review of alleged discriminatory acts;

(6) petitions for award of costs and expenses;

(7) appeals from initial orders or decisions of presiding officers; and

(8) all other appeals and review procedures authorized by the act.

(b) Definitions. As used in this act:

(1) "Party" means:

(A) the person to whom an order, notice of violation, civil penalty assessment, suspension of permit, revocation of permit, petition for award of costs and expenses, is specifically directed; or

(B) a person named or allowed to intervene as a party to a state agency proceeding or allowed to intervene as a party in a proceeding;

(2) "Person" means an individual, partnership, corporation, association, political subdivision or unit of them or public or private organization or entity of any character;

(c) Rules of procedure:

(1) Hearings shall be held in the location designated by the presiding officer, giving due consideration to the convenience of the parties, their representatives and witnesses;

(2) All documents which are to be filed in a proceeding governed by this section shall be filed in the office of legal services, suite 904, Landon state office building, Topeka, Kansas 66612.

(3) A person who has initiated a proceeding under this section shall file a proof of service in the form of a registered receipt if by certified or registered mail, or acknowledgement by the party served or verified return where service is made personally. A certificate of service shall be contained in all other documents filed by a party.

(4) The effective filing date of a notice of appeal or petition for review shall be the date of receipt by the office of legal services if filed personally, or the postmark date if filed by mail. The

burden of establishing the date of mailing shall be on the person filing the document.

(5) All documents shall be captioned with the name of the party, name of the facility, mine, or site to which the document pertains, if appropriate the number of the notice, order, or other agency decision or action to which the appeal pertains, the case number assigned to the original agency action, any other identifying information such as permit number.

(6) Service.

(A) Copies of documents which initiate a proceeding shall be served upon all statutory parties by registered or certified mail, return receipt requested.

(B) Copies of all subsequent documents shall be served personally or by first class mail.

(C) Service of all documents is complete at the time of personal service, or if by mail, upon receipt.

(D) When an attorney has entered an appearance on behalf of a party, thereafter service shall be made upon the attorney.

(7) Intervention. Any person shall petition for leave to intervene in a proceeding. Said petition shall set out the interest of the petitioner and why his/her interest would be adversely affected.

(A) The presiding officer shall grant intervention if the petitioner:

(i) had a statutory right to initiate the proceeding into which he/she seeks intervention.

(ii) has an interest which would be adversely affected by the outcome of the proceeding.

(B) The presiding officer shall consider the following to determine if intervention is appropriate:

(i) the nature of the issues;

(ii) the adequacy of the representation of petitioner's interest provided by the existing parties;

(iii) the ability of the petitioner to present relevant evidence and argument;

(iv) the effect of intervention on the agency's implementation of its statutory duties.

(C) Any person granted leave to intervene shall participate as a party.

(D) The presiding officer shall determine the extent and terms of limited participation by an intervenor.

(8) Voluntary dismissal. Any party who initiated a proceeding shall withdraw it by moving to dismiss. The presiding officer shall grant such a motion.

(9) Pleadings, motions, briefs; service.

At appropriate stages of the proceeding, all par-

ties shall be given full opportunity to file pleadings, motions and objections.

(A) All pleadings and motions shall be in writing and state concisely the supporting grounds.

(B) Any party shall have 15 days from the date of service of the pleading in which to file a response, unless otherwise ordered by the presiding officer:

(C) Failure to make a timely motion or response shall be construed as a waiver of objection.

(D) All motions shall be ruled upon expeditiously.

(E) At appropriate stages, all parties, shall be given full opportunity to file briefs, proposed findings of fact and conclusions of law and proposed initial and final orders.

(F) All documents filed pursuant to this subsection shall be served on all parties by mail or any other means prescribed in this regulation.

(10) Consolidation. When pending proceedings involve a common question of fact or law, they shall be consolidated pursuant to a motion by a party or the presiding officer.

(11) Waiver of hearing. Any person entitled to a hearing shall waive such right in writing. Any person required to file a responsive pleading and fails to do so by the required time, shall be deemed to have waived his right to a hearing.

(d) Formal hearings. When a statute provides for a hearing in accordance with this act, the hearing shall be governed by this subsection, and amendments thereto except as otherwise provided by subsections (e), (f), and (g).

(1) Participation and representation.

(A) Any party shall participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(B) Whether or not participating in person, any party shall be represented at the party's own expense by counsel or, if permitted by law, other representative.

(C) The department shall require a corporation or other artificial person to participate by counsel.

(2) Presiding officer.

(A) The agency head or one or more other persons designated by the agency head shall be the presiding officer.

(B) Any person serving or designated to serve alone or with others as presiding officer is subject to disqualification for administrative bias, prejudice or interest.

(C) Any party shall petition for the disqualification of a presiding officer promptly after receipt of notice indicating that the person will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(D) A presiding officer whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

(E) If a substitute is required for a presiding officer who is disqualified or becomes unavailable for any reason, any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the latter.

(F) The department shall enter into agreements with another state agency to provide hearing officers to conduct proceedings under this act or for other agency proceedings.

(3) Prehearing conference; notice. The presiding officer designated to conduct the hearing shall conduct a prehearing conference. If the conference is conducted:

(A) The department shall assign a presiding officer for the prehearing conference, exercising the same discretion as is provided by subsection (d)(1)(B) and amendments thereto concerning the selection of a presiding officer for a hearing.

(B) The presiding officer for the prehearing conference shall set the time and place of the conference and give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(4) The prehearing conference notice shall include:

(A) the names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(B) the name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the state agency;

(C) the official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(D) a statement of the time, place, and nature of the prehearing conference;

(E) a statement of the legal authority and jurisdiction under which the prehearing conference and hearing are to be held;

(F) the name, official title, mailing address and telephone number of the presiding officer for the prehearing conference;

(G) a statement that at the prehearing confer-

ence proceeding, without further notice, may be converted into a conference hearing or a summary proceeding for disposition of the matter as provided by this act; and

(H) a statement that any party who fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding shall be held in default; and

(I) The notice shall include any other matters that the presiding officer considers desirable to expedite the proceedings.

(5) Prehearing conference procedure; prehearing order.

(A) The presiding officer may conduct all or part of the prehearing conference by telephone or other electronic means if each participant in the conference has an opportunity to participate in the entire proceeding while it is taking place.

(B) The presiding officer shall conduct the prehearing conference, as shall be appropriate, to deal with such matters as

(i) conversion of the proceeding to another type;

(ii) exploration of settlement possibilities;

(iii) preparation of stipulations;

(iv) clarification of issues;

(v) rulings on identity and limitation of the number of witnesses;

(vi) objections to proffers of evidence;

(vii) determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person;

(viii) order of presentation of evidence and cross-examination;

(ix) rulings regarding issuance of subpoenas;

(x) discovery orders and protective orders; and

(xi) such other matters as will promote the orderly and prompt conduct of the hearing.

(C) The presiding officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(D) If a prehearing conference is not held, the presiding officer for the hearing shall issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

(6) Notice of administrative hearing.

(A) The department shall set the time and place of the hearing and give reasonable written notice at least 10 days prior to the hearing to all parties and to all persons who have filed written

petitions to intervene in the matter. Service of notices shall be made in accordance with subsection (18) as amended.

(B) The notice shall include a copy of any prehearing order rendered in the matter.

(C) To the extent not included in a prehearing order accompanying it, the notice shall include:

(i) the names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(ii) the name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the state agency;

(iii) the official file or other reference number, the name of the proceeding and a general description of the subject matter;

(iv) the time, place, and nature of the hearing;

(v) the legal authority and jurisdiction under which the hearing is to be held;

(vi) the name, official title, mailing address, and telephone number of the presiding officer;

(vii) the issues involved and, to the extent known to the presiding officer, the matters asserted by the parties; and

(viii) a statement that any party who fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding shall be held in default.

(D) The notice may include any other matters the presiding officer considers desirable to expedite the proceedings.

(E) Any other person entitled to notice under any other provision of law shall be notified:

(i) Notice shall be given in the manner specified by such provision of law or, if no such manner is specified, in a manner determined by the agency.

(ii) If any person other than the agency is directed to give notice under this subsection, the agency shall require that the person furnish proof of service.

(iii) Notice under this subsection shall include all types of information provided in subsections (C) (i) through (iv) or of a brief statement of the subject matter, parties, time, place and nature of the hearing, manner in which notice to the parties may be inspected and copied, and the name and telephone number of the presiding officer.

(7) Default.

(A) If a party fails to attend or participate in a prehearing conference, hearing or other adjudicative proceeding, the presiding officer shall serve

all parties with notice of the proposed default order, including the grounds for default.

(B) Within seven days after service of a proposed default order, the party against whom it was issued may file a written motion requesting that the proposed default order be vacated stating the grounds relied upon. During this period, the presiding officer may adjourn the proceedings or conduct them without the participation of the defaulting party, with due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

(C) The proposed default order shall become effective seven days after service unless vacated by the presiding officer.

(D) Once a default order becomes effective, the presiding officer may conduct any proceedings necessary to complete the adjudication and determine all issues in the adjudication, including those affecting the defaulting party without that party's participation. In lieu of determining the issues affecting the defaulting party, the presiding officer may dismiss that party's application for an adjudicative proceeding, unless otherwise prohibited by law.

(8) Certification of interlocutory ruling. On the presiding officer's or a party's motion, a ruling may be certified to the secretary if that ruling presents a controlling question of law and immediate appeal would materially advance the ultimate disposition of the case.

(9) Summary judgment. Any party may move for summary decision, in whole or in part, after a proceeding has begun.

(A) The moving party shall verify all allegations of fact with supporting affidavits, unless reliance is upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

(B) The presiding officer shall grant such a motion if the record, including pleadings, depositions, answers to interrogatories, admissions, and affidavits, show that;

(i) there is not disputed issue as to any material fact; and

(ii) the moving party is entitled to a summary decision as a matter of law.

(C) If complete summary decision is not granted, and an evidentiary hearing is necessary, the presiding officer shall, if practicable, examine all relevant evidence and documents in the record, ascertain what material facts are controverted in good faith and issue an order specifying those

facts which are not substantially controverted and directs such further proceedings as determined necessary.

(10) The presiding officer:

(A) Shall regulate the proceedings;

(B) Shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, to the extent necessary for full disclosure of all relevant facts and issues, except as restricted by a limited grant of intervention or by the pre-hearing order.

(C) May, and when required by statute shall, give nonparties an opportunity to present oral or written statements. When the presiding officer proposes to consider a statement by a nonparty:

(i) all parties shall have an opportunity to challenge or rebut the statement; and,

(ii) any party may, by motion, require the statement to be given under oath or confirmation.

(D) May conduct all or part of the hearing by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding.

(E) Shall cause the hearing to be recorded at the state agency's expense. The state agency is not required, at its expense to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense and subject to such reasonable conditions as the state agency shall establish, shall cause a person other than the state agency to prepare a transcript from the state agency's record, or cause additional recordings to be made during the hearing.

(F) May close parts of the hearing from public observation only where a provision of the law expressly authorizes closure.

(11) Proposed findings of fact and conclusions of law. The presiding officer shall allow the parties to submit proposed findings of fact and conclusions of law with a supporting brief therefor at a time set forth by the presiding officer.

(12) Evidence; official notice.

(A) A presiding officer is not bound by the statutory rules of evidence, but shall give the parties reasonable opportunity to be heard and to present evidence, and the presiding officer shall act reasonably without partiality. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence need not be excluded solely because it is hearsay.

(B) All testimony of parties and witnesses shall be made under oath or affirmation and the pre-

siding officer shall have the power to administer an oath or affirmation for that purpose.

(C) Statements presented by nonparties in accordance with (d)(10)(C) above, shall be received as evidence.

(D) Any part of the evidence shall be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(E) Documentary evidence shall be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original if available;

(F) Official notice shall be taken of:

(i) any matter that could be judicially noticed in the courts of this state;

(ii) the record of other proceedings before the state agency;

(iii) technical or scientific matters within the state agency's specialized knowledge; and

(iv) codes of standards that have been adopted by an agency of the United States, of this state or of another state or by a nationally recognized organization or association. Parties shall be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on matters or material noticed, of the specific matters or material noticed and the source of them, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the matters or material so noticed.

(13) Orders, initial and final.

(A) If the presiding officer is the agency head, the presiding officer shall render a final order.

(B) If the presiding officer is not the agency head, the presiding officer shall render an initial order, which becomes a final order unless reviewed in accordance with subsection (14) below, and amendments.

(C) A final order or initial order shall include, separately stated, findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration, adminis-

trative review or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, shall become a final order.

(D) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.

(E) If a substitute presiding officer is appointed, the substitute presiding officer shall use any existing record and shall conduct any further proceedings appropriate in the interests of justice.

(F) The presiding officer shall allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(G) A final order or initial order pursuant to this section shall be rendered in writing and served within 30 days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless this period is waived or extended with the written consent of all parties or for good cause shown.

(H) The presiding officer shall cause copies of the order to be served on each party and, if the order is an initial order, the agency head in the manner prescribed by subsection (18) and amendments thereto.

(14) Review of initial order; exceptions to reviewability.

(A) The agency head, upon its own motion shall, and upon petition by any party or when required by law shall, review an initial order, except to the extent that:

(i) A provision of law precludes or limits review of the initial order; or

(ii) the agency head determines to review some but not all issues, or not to exercise any review, or delegates its authority to review the initial order to one or more persons, unless such delegation is expressly prohibited by law, or authorizes one or more persons to review the initial order, subject to further review by the agency head.

(B) A petition for review of an initial order must be filed with the agency head, or with any person designated for this purpose by rule and regulation of the state agency, within 15 days after service of the initial order. If the agency head on its own motion decides to review an initial order, the agency head shall give written notice of its intention to review the initial order within 15 days after its service. If the agency head determines not to review an initial order in response to a petition

for review, the agency head shall, within 20 days after filing of the petition for review, serve on each party an order stating that review will not be exercised.

(C) The petition for review shall state its basis. If the agency head on its own motion gives notice of its intent to review an initial order, the agency head shall identify the issues that it intends to review.

(D) In reviewing an initial order, the agency head or designee shall exercise all the decision-making power that the agency head or designee would have had to render a final order had the agency head or designee presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the agency head or designee upon notice to all parties.

(E) The agency head or designee shall afford each party an opportunity to present briefs and shall afford each party an opportunity to present oral argument.

(F) The agency head or designee shall render a final order disposing of the proceeding or remand the matter for further proceedings with instructions to the person who rendered the initial order. Upon remanding a matter, the agency head or designee shall order such temporary relief as is authorized and appropriate.

(G) A final order or an order remanding the matter for further proceedings shall be rendered in writing and served within 30 days after receipt of briefs and oral argument unless that period is waived or extended with written consent of all parties or for good cause shown.

(H) A final order or an order remanding the matter for further proceedings under this section shall identify any difference between this order and the initial order and shall include, or incorporate by express reference to the initial order, all the matters required by subsection (13) (C) and amendments thereto.

(I) The agency head shall cause copies of the final order or order remanding the matter for further proceedings to be served on each party in the manner prescribed by subsection (18) and amendments.

(15) Stay. A party shall submit to the presiding officer or agency head a petition for stay of effectiveness of an initial or final order until the time at which a petition for judicial review would no longer be timely, unless otherwise provided by statute or stated in the initial or final order. The presiding officer or agency head shall take action

on the petition for stay, either before or after the effective date of the initial or final order.

(16) Reconsideration.

(A) Any party, within 15 days after service of a final order, shall file a petition for reconsideration with the agency head, stating the specific grounds upon which relief is requested. The filing of the petition is not a prerequisite for seeking administrative or judicial review.

(B) The agency head shall render a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings. The petition shall be granted, in whole or in part, only if the agency head states, in the written order, findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, to justify the order. The petition is deemed to have been denied if the agency head does not dispose of it within 20 days after the filing of the petition.

An order under this section shall be served on the parties in the manner prescribed by subsection (18) hereunder and amendments thereto.

(17) Orders, when effective.

(A) Unless a later date is stated in a final order or a stay is granted, a final order is effective upon service.

(B) Unless a later date in an initial order or a stay is granted, an initial order shall become effective and shall become the final order:

(i) When the initial order is served, if administrative review is unavailable;

(ii) when the agency head serves an order stating, after a petition for review has been filed, that review will not be exercised, or

(iii) 30 days after service if no party has filed a petition for review by the agency head, the agency head has not given written notice of its intention to exercise review and review by the agency head is not otherwise required by law.

(C) This section does not preclude the department from taking immediate action to protect the public interest in accordance with subsection (f), and amendments thereto.

(18) Service of order. Service of an order or notice shall be made upon the party and the party's attorney of record, if any, by delivering a copy of the order or notice to the person to be served or by mailing a copy of the order or notice to the person at the person's last known address. Delivery of a copy of an order or notice means handing the order or notice to the person or leav-

ing the order or notice at the person's principal place of business or residence with a person of suitable age and discretion who works or resides therein. Service shall be presumed if the presiding officer, or a person directed to make service by the presiding officer, makes a written certificate of service. Service by mail is complete upon mailing. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or order and the notice or order is served by mail, three days shall be added to the prescribed period.

(19) Record.

(A) The department shall maintain an official record of each formal hearing.

(B) The record consists only of:

(i) Notices of all proceedings;

(ii) any prehearing order;

(iii) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(iv) evidence received or considered;

(v) a statement of matters officially noticed;

(vi) proffers of proof and objections and rulings on them;

(vii) proposed findings, requested orders and exceptions;

(viii) the record prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;

(ix) any final order, initial order, or order on reconsideration; and

(x) staff memoranda or data submitted to the presiding officer.

(C) Except to the extent that this act or another statute provides otherwise, the state agency record, excluding matters under paragraph (x) of subsection (B), constitutes the exclusive basis for state agency action in formal hearings and for judicial review of them.

(e) Conference hearing; use, when.

(1) A conference hearing shall be used if its use in the circumstances does not violate any provision of law and where there is:

(A) A matter in which there is no disputed issue of material fact; or

(B) A matter in which there is a disputed issue of material fact and the parties agree to a conference hearing.

(2) Procedure. The procedures of this act pertaining to formal hearings apply to a conference hearing, except to the following extent:

(A) If a matter is initiated as a conference hearing, no prehearing conference shall be held.

(B) The provisions of K.A.R. 47-4-15 and amendments thereto do not apply to conference hearings insofar as those provisions authorize the issuance and enforcement of subpoenas and discovery orders but do not apply to conference hearings insofar as those provisions authorize the presiding officer to issue protective orders at the request of any party or upon the presiding officer's motion.

(C) Paragraphs (10) (A), (B) and (C) of amendments thereto do not apply; but (i) the presiding officer shall regulate the course of the proceedings; (ii) only the parties shall testify and present written exhibits; and (iii) the parties shall offer comments on the issues.

(3) Disclosure of material or essential facts.

(A) If during a conference hearing the presiding officer has reason to believe that material facts are in dispute, the presiding officer shall require any party to state the identity of the witnesses or other sources through whom the party would propose to present proof if the proceeding were converted to a formal hearing, but if disclosure of any fact, allegation or source is privileged or expressly prohibited by any provision of law, the presiding officer shall require the party to indicate that confidential facts, allegations or sources are involved but not to disclose the confidential facts, allegations or sources.

(B) If during a conference hearing a party has reason to believe that essential facts must be obtained in order to permit an adequate presentation of the case, the party shall inform the presiding officer regarding the general nature of the facts and the sources from whom the party would propose to obtain those facts if the proceeding were converted to a formal hearing.

(f) Emergency proceedings. Use when; procedure.

(1) A state agency shall use emergency proceedings;

(A) In a situation involving an immediate danger to the public health, safety or welfare requiring immediate state agency action or

(B) as otherwise provided by law.

(2) the department shall take only such action as is necessary:

(A) To prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication or

(B) to remedy a situation for which use of

emergency adjudication is otherwise provided by law.

(3) the department shall render an order, including a brief statement of findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, to justify the department's decision to take the specific action and the determination of:

(A) An immediate danger or

(B) the existence of a situation for which use of emergency adjudication is otherwise provided by law.

(4) The department shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when rendered. Notice under this subsection shall constitute service for the purposes of the act for judicial review and civil enforcement of agency actions.

(5) After issuing an order pursuant to this section, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not justify the use of emergency proceedings under subsection (1).

(6) The administrative record consists of any documents regarding the matter that were considered or prepared by the state agency. The department shall maintain these documents as its official record.

(7) Unless otherwise required by a provision of law, the state agency record need not constitute the exclusive basis for in emergency proceedings or for judicial review of them.

(g) Summary proceedings. Use, when; right to request hearing; orders, contents.

(1) The department shall use summary proceedings, subject to a party's request for a hearing on the order, if:

(A) The use of those proceedings in the circumstances does not violate any provision of law; and

(B) the protection of the public interest does not require the state agency to give notice and an opportunity to participate to persons other than the parties.

(2) The department shall serve each party with a copy of the order in a summary proceeding in the manner prescribed by subsection (d) (18) and amendments thereto.

(3) The order shall include at least:

(A) A statement of the department's action and, if unfavorable action is taken, a brief statement of the reasons for the action;

(B) notice of the time and manner for requesting a hearing on the order; and

(C) notice that, if a hearing is not requested, the order shall become effective upon the expiration of the time for requesting a hearing.

(4) Record.

(A) The administrative record for a summary proceeding consists of any documents regarding the matter that were considered or prepared by the state agency. The department shall maintain these documents as its official record.

(B) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in summary proceedings or for judicial review of them. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-407, 49-416a; effective Feb. 11, 1991.)

47-4-15. Administrative hearings; discovery. (a) Requests for discovery shall be made in writing to the presiding officer and a copy of each request for discovery shall be served on the party or person against whom discovery is sought. The presiding officer may specify the times during which the parties may pursue discovery and respond to discovery requests. The presiding officer may issue subpoenas, discovery orders and protective orders in accordance with the rules of civil procedure.

(b) Subpoenas issued by the presiding officer shall be served by a person designated by the presiding officer or any other person who is not a party and is not less than 18 years of age. Service shall be in person and at the expense of the requesting party. Proof of service shall be shown by affidavit.

(c) Subpoenas and orders issued by the presiding officer may be enforced pursuant to the provisions of the act for judicial review and civil enforcement or agency actions K.S.A. 77-601 *et seq.*

(d) Discovery methods. Parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or upon written interrogatories;

(2) Written interrogatories;

(3) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and

(4) Requests for admission.

(e) Time for discovery. Following the initiation of a proceeding, the parties may initiate discovery

at any time as long as it does not interfere with the conduct of the hearing.

(f) Scope of discovery.

(1) Unless otherwise limited by order of the presiding officer in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(2) It is not grounds for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(3) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (1) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his/her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his/her case and that he/she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

(g) Protective Order. Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;

(5) Discovery be conducted with no one pres-

ent except persons designated by the presiding officer; or

(6) A trade secret or other confidential research, development or commercial information may not be disclosed or be disclosed only in a designated way.

(h) Sequence and timing of discovery. Unless the presiding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(i) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his/her response to include information thereafter acquired, except as follows:

(A) A party is under a duty to timely supplement his/her response with respect to any question directly addressed to:

(i) the identity and location of persons having knowledge of discoverable matters; or

(ii) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he/she is expected to testify and the substance of his/her testimony.

(B) A party is under a duty to timely amend a prior response if he/she later obtains information upon the basis of which

(i) He/she knows the response was incorrect when made; or

(ii) He/she knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(C) A duty to supplement responses may be imposed by order of the presiding officer or agreement of the parties.

(j) Motion to compel discovery.

(1) If a deponent fails to answer a question propounded, or a party upon whom a request is made pursuant to subsection (d)(3) or a party upon whom answers to interrogatories are served fails to adequately respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the discovering party may move the presiding officer for an order compelling a response or inspection in accordance with the request.

(2) The motion shall set forth:

(A) The nature of the questions or request;

(B) The response or objection of the party upon whom the request was served; and

(C) Arguments in support of the motion.

(3) For purposes of this section, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.

(4) In ruling on a motion made pursuant to this section, the presiding officer may make such a protective order as he/she is authorized to make on a motion made pursuant to K.A.R. 47-4(f)(4) above.

(k) Failure to comply with orders compelling discovery. If a party or an officer, director, or other agent of a party fails to obey an order to provide or permit discovery, the presiding officer before whom the action is pending may make such orders in regard to the failure as are just, including but not limited to the following:

(1) An order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him/her from introducing designated matters into evidence; or

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(l) Depositions upon oral examination or upon written questions.

(1) Any party desiring to take the testimony of any other party or other person by deposition upon oral examination or written questions shall, without leave of the presiding officer, give reasonable notice in writing to every other party, to the person to be examined and to the presiding officer of:

(A) The proposed time and place of taking the deposition;

(B) The name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him/her or the particular group or class to which he/she belongs;

(C) The matter upon which each person will be examined; and

(D) The name or descriptive title and address of the officer before whom the deposition is to be taken.

(2) A deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(3) The actual taking of the deposition shall proceed as follows:

(A) The deposition shall be on the record;

(B) The officer before whom the deposition is to be taken shall put the witness under oath or affirmation;

(C) Examination and cross-examination shall proceed as at a hearing;

(D) All objections made at the time of the examination shall be noted by the officer upon the deposition;

(E) The officer shall not rule on objections to the evidence, but evidence objected to shall be taken subject to the objections.

(4) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature, unless examination and signature is waived by the deponent. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign.

(5) Where the deposition is to be taken upon written questions, the party taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be taken. Within 30 days after service, any other party may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, as in the case of a deposition on oral examination.

(6) A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts.

(7) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party at whose instance the deposition is taken.

(8) The deponent may be accompanied, represented, and advised by legal counsel.

(m) Use of depositions. At the hearing, any part or all of a deposition, so far as admissible,

may be used against any party who was present or represented at the taking of the deposition, or who had reasonable notice thereof, in accordance with any of the following provisions;

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness;

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent or a person designated to testify on behalf of a public or private corporation, partnership, or association or governmental agency which is a party may be used by an adverse party for any purpose; or

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose if the presiding officer finds that:

(A) The witness is dead;

(B) The witness is at a distance greater than 100 miles from the place of hearing, or is outside the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;

(C) The witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) Such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be used.

(n) Written interrogatories to parties.

(1) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be served on the presiding officer and upon all parties to the proceeding.

(2) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answer and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all par-

ties to the proceeding within 30 days after service of the interrogatories, or within such shorter or longer period as the presiding officer may allow.

(3) Interrogatories may relate to any matters which can be inquired into under subsection (f) above. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the presiding officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(o) Production of documents and things and entry upon land for inspection and other purposes.

(1) Any party may serve on any other party a request to:

(A) Produce and permit the party making the request, or a person acting on his/her behalf, to inspect and copy any designated document, or to inspect and copy, test, or sample any tangible things within the scope of subsection (f) above, and which are in the possession, custody, or control of the party upon whom the request is served; or

(B) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property (including the air, water, and soil) or any designated object or operation thereon, within the scope of subsection (f) above.

(2) The request may be served on any party without leave of the presiding officer.

(3) The request shall:

(A) Set forth the items to be inspected either by individual item or by category;

(B) Describe each item or category with reasonable particularity; and

(C) Specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(4) The party upon whom the request is served shall serve on the party submitting the request a written response within 30 days after service of the request.

(5) The response shall state, with respect to each item or category:

(A) That inspection and related activities will be permitted as requested; or

(B) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

(p) Request for Admissions.

(1) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(2) Each matter of which an admission is requested is admitted unless, within 30 days after service of the request or such shorter or longer time as the presiding officer may allow, the party to whom the request is directed serves on the requesting party:

(A) A sworn statement denying specifically the relevant matters of which an admission is requested;

(B) A sworn statement setting forth in detail the reasons why he/she can neither truthfully admit nor deny them; or

(C) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(3) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he/she states that he/she has made reasonable inquiry and that the information known or readily obtainable by him/her is insufficient to enable him/her to admit or deny.

(4) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the presiding officer determines that an objection is justified, he/she shall order that an answer be served. If the presiding officer determines that an answer does not comply with the requirements of this section, he/she may order either that the matter is admitted or that an amended answer be served. The presiding officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

(5) Any matter admitted under this section is conclusively established unless the presiding officer on motion permits withdrawal or amendment of the admission.

(6) Any admission made by a party under this section is for the purpose of the pending action only and is not an admission by him/her for any

other purpose nor may it be used against him/her in any other proceeding. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991.)

47-4-16. Interim orders for temporary relief. An interim order for temporary relief may be issued by the department or a presiding officer, on its own initiative or on written request, when there has been a showing of good cause. An interim order shall not be granted in permit application cases where the relief sought is issuance of a permit, that has been denied in whole or in part by the department.

(b) Unless otherwise specified by statute, an interim order for temporary relief shall be effective for 30 days at most if a hearing is not held on the merits of the issues. (Authorized by K.S.A. 1989 Supp. 49-405, 49-407, 49-416a; implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

47-4-17. Administrative hearings; award of costs and expenses. (a) Any person may file a petition for award of costs and expenses, including attorney fees, reasonably incurred as a result of that person's participation in any administrative proceeding under the state act which results in a final order being issued by the department or its presiding officer. The petition shall be filed within 45 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(b) A petition filed under this section shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition:

(1) an affidavit detailing all costs and expenses, including attorney fees, incurred as a result of participation in the proceeding;

(2) receipts or other evidence of the costs and expenses; and

(3) where attorney fees are claimed, the hours expended on the case, the customary commercial rate of payment for such services in the locality, and evidence of the experience, reputation, and ability of the attorney or attorneys.

(c) Any person served with the petition shall have 30 days from the date of service to file an answer.

(d) Appropriate costs and expenses, including attorney fees, may be awarded as follows:

(1) from the permittee, if the person initiates any administrative proceedings, or participates in such proceedings, upon a finding that a violation of the state act, these rules and regulations, or of the permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the department or its presiding officer determines that the person made a substantial contribution to the full and fair determination of the issues;

(2) from the department to anyone other than the permittee or permittee's representative, if the person initiates or participates in any proceeding under the act upon a finding that the person made a substantial contribution to a full and fair determination of the issues;

(3) from the department to the permittee when the permittee demonstrates that the department issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee;

(4) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee; or

(5) To the department where it demonstrates that any person applied for review or participated in an administrative proceeding in bad faith and for the purpose of harassing or embarrassing the department or any person employed by the department.

(e) An award may include all costs and expenses, including attorney fees and expert witness fees, reasonably incurred as a result of initiation of or participation in a proceeding under the state act. (Authorized by K.S.A. 1989 Supp. 49-405, 49-416a; implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

Article 5.—CIVIL PENALTIES

47-5-1 to 47-5-4. (Authorized by K.S.A. 1979 Supp. 49-405, 49-405c; effective, E-81-3, Jan. 10, 1980; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-5-5. (Authorized by K.S.A. 1980 Supp. 49-405, 49-405c; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; revoked May 1, 1984.)

47-5-5a. Civil penalties; adoption by reference. (a) Subject to the provisions of subsection (c), the following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, as they existed on July 1, 1990 are hereby adopted by reference as rules and regulations of the secretary:

(b) The following terms shall be replaced with the indicated terms wherever they appear in the text of the rules and regulations incorporated adopted by reference under this section:

(1) How assessments are made, 30 CFR 845.11;

(2) When penalty will be assessed, 30 CFR 845.12;

(3) Point system for penalties, 30 CFR 845.13;

(4) Determination of penalty amount, 30 CFR 845.14;

(5) Assessment of separate violations for each day, 30 CFR 845.15;

(6) Waiver of use of formula to determine civil penalty, 30 CFR 845.16;

(7) Procedures for assessment of civil penalties, 30 CFR 845.17;

(8) Procedures for assessment conference, 30 CFR 845.18;

(9) Request for a hearing, 30 CFR 845.19; and

(10) Individual civil penalties, 30 CFR part 846.

(c) Review of proposed assessments of civil penalties. In the event a request for hearing is made pursuant to subsection (a)(9), the procedure set forth in K.A.R. 47-4-14 and the following shall apply.

(1) Time for filing petition.

(A) A petition for review of a proposed assessment of a civil penalty must be filed within 30 days of receipt of the proposed assessment; or

(B) If a timely request for a conference has been made pursuant to subsection (7) above, a petition for review must be filed within 15 days from service of notice by the presiding officer that the conference is completed.

(C) No extension of time shall be granted for filing a petition for review of a proposed assessment of a civil penalty as required by paragraph (A) or (B) of this section. If a petition for review is not filed within the time period provided in paragraph (A) or (B) of this section, the appropriateness of the amount of the penalty, and the fact of the violation if there is no proceeding pending under K.S.A. 1989 Supp. 49-416(a) to review the no-

tice violation or cessation order involved, shall be admitted, the petition shall be dismissed, and the civil penalty assessed shall become a final order of the secretary.

(2) Contents of petition; payment required.

(A) The petition shall include:

(i) a short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;

(ii) if the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula contained in K.A.R. adopting 30 CFR Part 723 was misapplied, along with a proposed civil penalty utilizing the civil penalty formula.

(iii) identification by number of all violations being contested.

(iv) the identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the petition; and

(v) a request for a hearing site.

(B) The petition shall be accompanied by:

(i) full payment of the proposed assessment in the form of a cashier's check, certified check, bank draft, personal check or bank money order made payable to surface mining section, to be placed in an escrow account pending final determination of the assessment; and

(ii) on the face of the payment an identification by number of the violations for which payment is being tendered.

(C) As required by K.S.A. 1989 Supp. 49-416(a), failure to make timely payment of the proposed assessment in full shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(D) No extension of time will be granted for full payment of the proposed assessment. If payment is not made within the time period provided in (b)(1) (A) or (B), the appropriateness of the amount of the penalty, and the fact of the violation, if there is no review proceeding, the notice of violation or cessation order involved shall be deemed admitted, the petition shall be dismissed, and the civil penalty assessed shall become a final order of the secretary.

(3) Answer: The surface mining section shall have 30 days from receipt of a copy of the petition within which to file an answer.

(4) Review of waiver determination:

(A) Within 10 days of the filing of a petition, petitioner may move the presiding officer to re-

view the granting or denial of a waiver of the civil penalty formula pursuant to subsection (a)(6) above.

(B) The motion shall contain a statement indicating all alleged facts relevant to the granting or denial of a waiver;

(C) Review shall be limited to the written determination of the section granting or denying the waiver, the motion and responses to the motion. The standard of review shall be abuse of discretion.

(D) If the presiding officer finds that the section abused its discretion in granting or denying the waiver, the presiding officer shall hold a hearing on the petition for review of the proposed assessment and make a determination pursuant to subsection (7) hereunder.

(5) Burden of proof in civil penalty proceedings: In civil penalty proceedings, the surface mining section shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the fact of violation and as to the amount of the penalty.

(6) Summary disposition:

(A) In a civil penalty proceeding where the person against whom the proposed civil penalty is assessed fails to comply on time with any prehearing order of a presiding officer, the presiding officer shall issue an order to show cause why:

(i) that person should not be deemed to have waived his/her right to a hearing; and

(ii) the proceedings should not be dismissed and the assessment become final.

(B) If the order to show cause is not satisfied as required, the presiding officer shall order the proceedings summarily dismissed and issue a final order.

(C) Where the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person will be deemed to have waived his/her right to a hearing and the presiding officer may assume for purposes of the assessment:

(i) that each violation listed in the notice of violation or order occurred; and

(ii) the truth of any facts alleged in such notice or order.

(D) in order to issue an initial order assessing the appropriate penalty when the person against whom the proposed civil penalty is assessed fails to appear at the hearing, a presiding officer shall either conduct an ex parte hearing or require sur-

face mining section to furnish proposed findings of fact and conclusions of law.

(E) Nothing in this section shall be construed to deprive the person against whom the penalty is assessed of his/her opportunity to have the surface mining section prove the violations charged in open hearing with confrontation and cross-examination of witnesses, except where that person fails to comply with a prehearing order or fails to appear at the scheduled hearing.

(7) Initial order of presiding officer:

(A) The presiding officer shall incorporate in his/her decision concerning the civil penalty, findings of fact on each of the four criteria set forth in K.A.R. 47-5-5a(a)(3) above and conclusions of law.

(B) If the presiding officer finds that:

(i) a violation occurred or that the fact of violation is uncontested, he/she shall establish the amount of the penalty, but in so doing, he/she shall adhere to the point system and conversion table contained in 30 CFR 845.14 adopted in K.A.R. 47-5-5(3) and (4) above, except that the presiding officer may waive the use of such point system where he/she determines that a waiver would further abatement of violations of the surface mining act. However, the presiding officer shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the act; or

(ii) no violation occurred, he/she shall issue an order that the proposed assessment be returned to the petitioner.

(C) If the presiding officer makes a finding that no violation occurred or if the presiding officer reduces the amount of the civil penalty below the proposed assessment and a timely petition for review of his/her decision is not filed with the secretary or the secretary refuses to grant such a petition, to remit the appropriate amount to the person who made the payment.

(D) If the presiding officer increases the amount of the civil penalty above that of the proposed assessment, the presiding officer shall order payment of the appropriate amount within 30 days of receipt of the decision.

(8) Appeals:

(A) Any party may petition the secretary to review and/or reconsider the initial order of a presiding officer concerning an assessment pursuant to K.A.R. 47-4-14(d) (14) and (16) respectively.

(B) Any party may appeal the final order of the secretary pursuant to the Kansas judicial review act K.S.A. 77-601 *et seq.*

(1) "Act" shall be replaced by "state act."

(2) "Director" or "director or his designee" shall be replaced by "secretary or secretary's designee."

(3) "Secretary" shall be replaced by "secretary."

(4) "Section 521(a)" shall be replaced by "K.S.A. 1989 Supp. 49-405(m)(2)."

(5) "Section 525(c)" shall be replaced by "K.S.A. 1989 Supp. 49-416a(c)."

(6) "Section 526" and "Section 526(c)" shall be replaced by "K.S.A. 1989 Supp. 49-422a."

(7) "Section 518(e), 518(f), 521(a)(4), or 521(c)" shall be replaced by "K.S.A. 1989 Supp. 49-405c(e), 49-405c(f), 49-405(m)(3), or 49-405(m)(4)."

(8) "Office" or "Office of hearings and appeals" shall be replaced by "department."

(9) "Sections 518, 521(a)(4), and 525" shall be replaced by "K.S.A. 1989 Supp. 49-405c, 49-405(m)(3), and 49-416a."

(10) "30 CFR 845.20" shall be replaced by "K.A.R. 47-5-16."

(11) "43 CFR 4.1300 *et seq.*" and "rule 4 of the federal rules of civil procedure" shall be replaced by "K.A.R. 47-4-14."

(12) "Standard" shall be replaced by "statute, regulation, or standard." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-405c, 49-416a; effective May 1, 1985; amended Feb. 11, 1991.)

47-5-6. (Authorized by K.S.A. 1980 Supp. 49-405, 49-405c; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; revoked May 1, 1985.)

47-5-7 to 47-5-13. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-405c; effective May 1, 1984; revoked May 1, 1985.)

47-5-14. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-405, 49-405c, and 49-416a; effective May 1, 1984; revoked May 1, 1985.)

47-5-15. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-405c; effective May 1, 1984; revoked May 1, 1985.)

47-5-16. **Civil penalties; final assessment and payment of civil penalty.** (a) If any

person to whom a notice of violation or cessation order is issued fails to request a hearing, the proposed assessment shall become a final order of the secretary; due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the secretary, the proposed civil penalty assessment shall be held in escrow until completion of the review. Otherwise, subject to subsection (c) of this regulation, the escrowed funds shall be transferred to the department in payment of the civil penalty and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed civil penalty under these regulations, all or part of the escrowed amount shall be refunded to the person assessed within 30 days of receipt of the order and shall include any interest that is accrued from the date of payment into escrow to the date of the refund.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the department within 15 days after the order is mailed to that person. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405c; effective May 1, 1984; amended May 1, 1985; amended Feb. 11, 1991.)

Article 6.—PERMIT REVIEW

47-6-1. **Permit review.** Each permit issued and outstanding during the term of the permit shall be reviewed by the secretary or secretary's designee not later than the middle of such term. After this review, reasonable revision or modification of the permit provisions may be ordered to ensure compliance with the laws and regulations. A copy of the order and the written findings shall be sent to the operator. The order shall be subject to provisions of K.S.A. 1989 Supp. 49-407(d) and 49-422a. (Authorized by K.S.A. 1989 Supp. 49-405, 49-410, as amended by L. 1990, Ch. 194, sec. 2; implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1980; amended Feb. 11, 1991.)

47-6-2. **Permit revision.** (a) An application made by an operator to amend or revise an existing permit shall be submitted at least sixty (60) days prior to the date which the operator desires to have the approval by the secretary.

(b) If the application for permit revision con-

tains significant alterations or departures from the method of mining or reclamation operations covered by the original permit, all permit application information, requirements and procedures shall be met. Whether a significant alteration or departure is involved shall be determined by the secretary or secretary's designee on a case-by-case basis upon review unless such determination is requested in writing by the operator at or before filing the application. On receiving such a request, the operator shall be advised by the secretary or secretary's designee if a significant alteration or departure is involved for the purpose of submitting an application.

(c) All applications for permit revision shall be accompanied by a map which meets the general map requirements of these rules. The proposed amendment shall be described in detail and supported by the technical data necessary to establish its impact and consequences on the surface coal mining and reclamation operation, the environment, and the public health and safety. Additional information may be requested when necessary to make an evaluation of the impact.

(d) No application for a permit revision shall be approved unless the applicant demonstrates and the regulatory authority finds that:

- (1) the reclamation required by the state act and the regulatory program can be accomplished;
- (2) applicable requirements under K.A.R. 47-3-42 (a) (43) pertinent to the revision are met; and
- (3) the application for revision complies with all requirements of the state act and the regulatory program.

(e) Any extension to the area covered by the permit, except incidental boundary revisions, shall be made through an application for a new permit. (Authorized by K.S.A. 1989 Supp. 49-405, 49-410, as amended by L. 1990, Ch. 194, sec. 2; implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1980; amended Feb. 11, 1991.)

47-6-3. Permit renewals; adoption by reference. The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary, as they existed on July 1, 1990, except as otherwise indicated:

(a) Permit renewals, 30 CFR 774.15, except subsection (c)(3) shall be deleted.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Subchapter J of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations."

(2) "This chapter" shall be replaced by "these rules and regulations."

(3) "Act" shall be replaced by "state act."

(4) "Part 775 of this chapter" shall be replaced by "K.S.A. 1989 Supp. 49-407(d), 49-416a, 49-422a, and article 4 of chapter 47 of the Kansas administrative rules and regulations."

(5) "Section 774.13" shall be replaced by "K.A.R. 47-6-2." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991.)

47-6-4. Permit transfers, sales assignments; adoption by reference. (a) Any application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the secretary not later than 30 days after that succession is approved by the secretary.

(b) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary, as they existed on July 1, 1990:

(c) Transfer, assignment, or sale of permit rights; general requirements, 30 CFR 774.17.

(d) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "This chapter" or "this subchapter" shall be replaced by "these rules and regulations."

(2) "Part 778 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(1) to (8), inclusive."

(3) "Subchapter J of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations." (Authorized by K.S.A. 1989 Supp. 49-405, implementing K.S.A. 1988 Supp. 49-410, as amended by L. 1990, Ch. 194, sec. 2; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991.)

47-6-5. (Authorized by K.S.A. 1980 Supp.

49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; revoked May 1, 1986.)

47-6-6. Permit conditions; adoption by reference. The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary, as they existed on July 1, 1990, except as otherwise indicated:

(a) Permit conditions, 30 CFR 773.17.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Subchapter J of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations."

(2) "This chapter" shall be replaced by "these rules and regulations."

(3) "Act" shall be replaced by "state act."

(4) "Parts 840 and 842" shall be replaced by "K.A.R. 47-15-1a."

(5) "Subchapter B or K of this chapter" shall be replaced by "K.A.R. 47-9-4 or K.A.R. 47-9-1."

(6) "Subchapter R of this chapter" or "that subchapter" shall be replaced by "the office." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991.)

47-6-7. Permit suspension or revocation. (a) A proceeding to suspend or revoke a permit shall begin with a show cause order issued by the secretary to the permittee and shall set forth:

(1) list of the unwarranted or willful violations which contribute to a pattern of violations;

(2) copy of each order or notice containing one or more of the violations listed;

(3) the basis for determining the existence of a pattern of violations; and

(4) the recommendation that the permit be suspended or revoked and the length and terms of the recommended suspension.

(b) Answer. The permittee shall have 30 days from receipt of the order within which to file an answer.

(c) Contents of answer. The permittee's answer to a show cause order shall set forth:

(1) the reasons, in detail, why a pattern of vi-

olations does not exist or has not existed, including all reasons for contesting:

(A) the fact of any violation alleged by surface mining section;

(B) the willfulness of any violation; or

(C) whether any violation was caused by the unwarranted failure of the permittee;

(2) all mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(3) any other alleged relevant facts; and

(4) whether a hearing on the show cause order is desired.

(d) Burden of proof in suspension or revocation proceedings. In proceedings to suspend or revoke a permit, the surface mining section shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(e) Procedure. The procedure set forth in K.A.R. 47-4-14(d) shall be followed.

(f) Decision by the presiding officer.

(1) After determining that a pattern of violations exists or has existed, the presiding officer shall order the permit either suspended or revoked. The presiding officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(2) The minimum suspension period imposed shall be three working days, except where the presiding officer finds that this would result in manifest injustice and not further the purposes of the act. The presiding officer may impose preconditions to lifting the suspension.

(3) The decision of the presiding officer shall be issued within 20 days:

(A) of the closing date of the hearing record; or

(B) of receipt of the answer, if no hearing is requested by any party and the presiding officer determines that no hearing is necessary.

(4) At any stage of a suspension or revocation proceeding, the parties may enter into a settlement, subject to the approval of the presiding officer.

(g) Summary judgment. Where the permittee fails to appear at a hearing:

(1) The permittee shall be deemed to have waived his right to a hearing.

(2) The presiding officer may assume for purposes of the proceeding that:

- (A) each violation listed in the order occurred;
- (B) all violations were willfully or negligently caused by the permittee; and
- (C) a pattern of violations exists.

(3) The presiding officer shall either conduct an ex-parte hearing or require the surface mining section to furnish proposed findings of fact and conclusions of law in order to issue an initial decision.

(h) Appeals.

(1) Any party may appeal the initial order by filing a notice of appeal with the secretary within five days from receipt of the order.

(2) This appeal shall follow the procedure in K.A.R. 47-4-14(a)(d)(14). The secretary shall act immediately to issue an expedited briefing schedule. The decision of the secretary shall be issued within 60 days of the date the record is closed by the secretary or, the date the answer is filed.

(2) Any further appeal from the secretary's final order shall be taken pursuant to the Kansas judicial review act K.S.A. 77-601 *et seq.* (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective Feb. 11, 1991.)

47-6-8. Termination of jurisdiction; adoption by reference. The following section of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, is hereby adopted as a rule and regulation of the secretary, as it existed on July 1, 1990, except as otherwise indicated: Applicability, 30 CFR 700.11, except subsections (a)(1) and (b) shall be deleted.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "the State or Federal program counterpart to Part 800 of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations."

(2) "This chapter" shall be replaced by "these rules and regulations."

(3) "Subchapter B of this chapter" shall be replaced by "K.A.R. 47-9-4."

(4) "Part 707 of this chapter" shall be replaced by "K.A.R. 47-6-8." (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective Feb. 11, 1991.)

47-6-9. Exemption for coal extraction incident to government financed highway or other construction; adoption by reference. (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary, as they existed on July 1, 1990, except as otherwise indicated:

(1) Responsibility, 30 CFR 707.4.

(2) Definitions, 30 CFR 707.5.

(3) Applicability, 30 CFR 707.11.

(4) Information to be maintained on site, 30 CFR 707.12.

(b) The following terms shall be replaced with the indicated terms wherever they appear;

(1) "Act" shall be replaced by "state act."

(2) "This chapter" shall be replaced by "these rules and regulations."

(4) "Parts 707.12" shall be replaced by "K.A.R. 47-6-9 (d)." (Authorized and implementing K.S.A. 1989 Supp. 49-405; effective Feb. 11, 1991.)

47-6-10. Exemption for coal extraction incidental to the extraction of other minerals; adoption by reference. (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted as rules and regulations of the secretary, as they existed on July 1, 1990, except as otherwise indicated:

(1) Scope, 30 CFR 702.1.

(2) Definitions, 30 CFR 702.5.

(3) Information collection, 30 CFR 702.10.

(4) Application requirements and procedures, 30 CFR 702.11.

(5) Contents of application for exemption, 30 CFR 702.12.

(6) Public availability of information, 30 CFR 702.13.

(7) Requirements for exemption, 30 CFR 702.14.

(8) Conditions of exemption and right of inspection and entry, 30 CFR 702.15.

(9) Stockpiling of minerals, 30 CFR 702.16.

(10) Revocation and enforcement, 30 CFR 702.17.

(11) Reporting requirements, 30 CFR 702.18.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

- (1) "Act" shall be replaced by "state act."
- (2) "This chapter" shall be replaced by "these rules and regulations."
- (4) "43 CFR 4.1280" shall be replaced by "K.A.R. 47-4-14a."
- (5) "Section 701(28)" shall be replaced by "K.S.A. 1989 Supp. 49-431." (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective Feb. 11, 1991.)

Article 7.—COAL EXPLORATION

47-7-1. (Authorized by K.S.A. 1980 Supp. 49-405, 49-427; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-7-2. **Coal exploration; adoption by reference.** (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed on July 1, 1990:

- (1) Notice requirements for exploration removing 250 tons of coal or less, 30 CFR 772.11;
- (2) Permit requirements for exploration removing more than 250 tons of coal, 30 CFR 772.12;
- (3) Coal exploration compliance duties, 30 CFR 772.13;
- (4) Requirements for commercial sale, 30 CFR 772.14; and
- (5) Public availability of information, 30 CFR 772.15.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

- (1) "Part 815 of this chapter" shall be replaced by "K.A.R. 47-9-1(b)."
- (2) "This chapter" shall be replaced by "these rules and regulations."
- (3) "Subchapter F of this chapter" shall be replaced by "article 12 of chapter 47 of the Kansas administrative rules and regulations."
- (4) "Part 775" shall be replaced by "K.S.A. 1989 Supp. 49-407(d), 49-416a, 49-422a, and article 4 of chapter 47 of the Kansas administrative rules and regulations."
- (5) "Section 518 of the act" shall be replaced by "K.S.A. 1989 Supp. 49-405c."
- (6) "Subchapter 1" shall be replaced by "arti-

cles 5 and 15 of chapter 47 of the Kansas administrative rules and regulations."

(7) "Parts 773-785 of this chapter" shall be replaced by "articles 3, 4, 6, and 10 of chapter 47 of the Kansas administrative rules and regulations, K.S.A. 1989 Supp. 49-407(d), 49-416a, and 49-422a."

(8) "Section 518 of the act, and subchapter 1 of this chapter," shall be replaced by "K.S.A. 1989 Supp. 49-405c and article 5 of chapter 47 of the Kansas administrative rules and regulations."

(9) "This part" shall be replaced by "K.A.R. 47-7-2." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-427; effective, E-81-30, Oct. 8, 1980, effective May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991.)

Article 8.—BONDING PROCEDURES

47-8-1. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-8-2. (Authorized by K.S.A. 1979 Supp. 49-405, 49-406; effective May 1, 1980; revoked May 1, 1986.)

47-8-3 to 47-8-5. (Authorized by K.S.A. 1980 Supp. 49-405, 49-415; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-8-6 to 47-8-8. (Authorized by K.S.A. 1980 Supp. 49-405, 49-416; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-8-9. **Bonding procedures; adoption by reference.** (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary as they existed on July 1, 1990.

- (1) Regulatory responsibilities, 30 CFR 800.4;
- (2) Definitions, 30 CFR 800.5;
- (3) Requirement to file a bond, 30 CFR 800.11, deleting subsection (e);
- (4) Form of the performance bond, 30 CFR 800.12;
- (5) Period of liability, 30 CFR 800.13;

(6) Determination of bond amount, 30 CFR 800.14;

(7) Adjustment of amount, 30 CFR 800.15;

(8) General terms and conditions of bond, 30 CFR 800.16;

(9) Bonding requirements for underground coal mines and long-term coal-related surface facilities and structures, 30 CFR 800.17;

(10) Surety bonds, 30 CFR 800.20;

(11) Collateral bonds, 30 CFR 800.21;

(12) Replacement of bonds, 30 CFR 800.30;

(13) Requirement to release performance bonds, 30 CFR 800.40;

(14) Forfeiture of bonds, 30 CFR 800.50;

(15) Terms and conditions for liability insurance, 30 CFR 800.60, deleting subsection (d);

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Act" shall be replaced by "state act";

(2) "(Under parts 780 and 784 of this chapter)" shall be replaced by "[under K.A.R. 47-3-42(a)(18) through (35), inclusive, and K.A.R. 47-10-1]";

(3) "This chapter" or "subchapter G of this chapter" shall be replaced by "these rules and regulations";

(4) "This subchapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations";

(5) "Section 515 of the act" or "section 515(b)(10)" shall be replaced by "K.S.A. 1989 Supp. 49-405a, K.S.A. 1989 Supp. 49-408 through K.S.A. 1989 Supp. 49-413, inclusive, K.S.A. 1989 Supp. 49-429, and the regulations promulgated thereunder";

(6) "Subchapter K of this chapter" shall be replaced by "article 9 of chapter 47 of the Kansas administrative rules and regulations";

(7) "Section 507(b)(16) of the act" shall be replaced by "K.S.A. 1989 Supp. 49-407(c)";

(8) "Part 823 of this chapter" shall be replaced by "K.A.R. 47-9-1(f)"; and

(9) "Section 513(b) of the act" shall be replaced by "K.S.A. 1989 Supp. 49-407(d) and the regulations promulgated thereunder."

(10) "Application" shall be replaced by "complete and accurate application." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-407, 49-429, K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended Feb. 11, 1991.)

47-8-9a. (Authorized by K.S.A. 49-405; implementing K.S.A. 1984 Supp. 49-406, K.S.A. 49-415, 49-416a; effective May 1, 1985; revoked May 1, 1986.)

47-8-10. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-406; effective May 1, 1983; revoked May 1, 1986.)

47-8-11. Use of forfeited bond funds. Funds collected from any bond forfeiture may only be used to:

(a) complete only the reclamation plan on the permit area on which bond was made for the surface mining operation for coal,

(b) cover associated administrative expenses. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-420, as amended by L. 1990, Ch. 194, sec. 3; effective May 1, 1983; amended Feb. 11, 1991.)

Article 9.—PERFORMANCE STANDARDS

47-9-1. Adoption by reference. The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary as the performance standards to be maintained by surface and underground coal mining and reclamation operations. The adoption by reference shall cover the parts and sections in effect on July 1, 1990, except as otherwise indicated:

(a) Permanent program performance standards—general provisions, 30 CFR 810.2;

(1) Objective, 30 CFR 810.2, except "subchapter" shall be replaced by "K.A.R. 47-9-1(a);

(2) Responsibility, 30 CFR 810.4, delete part "a";

(3) Applicability, 30 CFR 810.11; and

(4) "subchapter" shall be replaced by "K.A.R. 47-9-1(a)."

(b) permanent program performance standards—coal exploration, 30 CFR Part 815;

(1) Required documents, 30 CFR 815.13;

(2) performance standards for coal exploration, 30 CFR 815.15.

(c) permanent program standards—surface mining activities, 30 CFR Part 816;

(1) Signs and markers, 30 CFR 816.11; a subsection (g) shall be added to 30 CFR 816.11 which reads: "Increment boundary markers. As deemed

appropriate by the secretary or secretary's designee to ascertain increment boundaries, increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 1988 Supp. 49-406(h)";

(2) "subchapter" shall be replaced by "K.A.R. 47-9-1 (c)";

(3) casing and sealing of drilled holes: general requirements, 30 CFR 816.13;

(4) casing and sealing of drilled holes: temporary, 30 CFR 816.14;

(5) casing and sealing of drilled holes: permanent, 30 CFR 816.15;

(6) topsoil and subsoil, 30 CFR 816.22; The first paragraph of subsection (d) of 30 CFR 816.22 shall be replaced by the following:

Absent an approved schedule, topsoil and subsoil materials removed under paragraph (a) of this section shall be redistributed within 120 days following rough backfilling and grading in a manner that complies with the following:

(7) hydrologic balance: protection, 30 CFR 816.41;

(8) hydrologic balance: water quality standards and effluent limitations, 30 CFR 816.42;

(9) diversion, 30 CFR 816.43;

(10) hydrologic balance: sediment control structures, 30 CFR 816.45;

(11) hydrologic balance: siltation structures, 30 CFR 816.46;

(12) hydrologic balance: discharge structures, 30 CFR 816.47;

(13) impoundments, 30 CFR 816.49;

(14) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 CFR 816.56;

(15) hydrologic balance: stream buffer zones, 30 CFR 816.57;

(16) coal recovery, 30 CFR 816.59;

(17) use of explosives: general requirements, 30 CFR 816.61;

(18) use of explosives: preblasting survey, 30 CFR 816.62;

(19) use of explosives: blasting schedule, 30 CFR 816.64;

(20) use of explosives: blasting signs, warnings, and access control, 30 CFR 816.66;

(21) use of explosives: control of adverse effects, 30 CFR 816.67;

(22) use of explosives: records of blasting operations, 30 CFR 816.68;

(23) disposal of excess spoil: general requirements, 30 CFR 816.71;

(24) disposal of excess spoil: preexisting benches, 30 CFR 816.74;

(25) protection of underground mining, 30 CFR 816.79;

(26) coal mine waste: general requirements, 30 CFR 816.81;

(27) coal mine waste: refuse piles, 30 CFR 816.83;

(28) coal mine waste: impounding structures, 30 CFR 816.84;

(29) coal mine waste: burning and burned waste utilization, 30 CFR 816.87;

(30) disposal of noncoal mine waste, 30 CFR 816.89;

(31) stabilization of surface areas, 30 CFR 816.95;

(32) protection of fish, wildlife, and related environmental values, 30 CFR 816.97;

(33) slides and other damage, 30 CFR 816.99;

(34) contemporaneous reclamation, 30 CFR 816.100;

(35) backfilling and grading: general requirements, 30 CFR 816.102. The first paragraph of subsection (a) of 30 CFR 816.102 shall be replaced by the following:

Absent an approved schedule, backfilling and grading will be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. Disturbed areas shall be backfilled and graded to comply with the following:

(36) backfilling and grading: thin overburden, 30 CFR 816.104;

(37) backfilling and grading: thick overburden, 30 CFR 816.105;

(38) backfilling and grading: previously mined area, 30 CFR 816.106;

(39) revegetation: general requirements, 30 CFR 816.111;

(40) revegetation: timing, 30 CFR 816.113;

(41) revegetation: mulching and other soil stabilizing practices, 30 CFR 816.114;

(42) revegetation: standards for success, 30 CFR 816.116, delete editorial note "3", subsection (c)(2) will read, "in areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than five full years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard

during the growing seasons of any two years of the responsibility period, except the first year.” A subsection (i) will be added to 816.116 (c)(4). Subsection (c)(4)(i) will read “(i) The regulatory authority may allow 90 days from the issuance of a notice of violation for the repair of any rills and/or gullies which may occur. If the rills and/or gullies are repaired using normal husbandry practices, approved by the regulatory agency in consultation with the state conservationist or his designated representative, and the repairs are approved by the regulatory authority, the period of responsibility shall not be restarted. If the rills and/or gullies are not repaired and approved within 90 days, or if augmented seeding, fertilization, or irrigation was utilized to do the repairs, the regulatory authority will restart the period of liability, effective from the date the repair was completed and approved by the regulatory authority.”

(43) cessation of operations: temporary, 30 CFR 816.131;

(44) cessation of operations: permanent, 30 CFR 816.132;

(45) postmining land use, 30 CFR 816.133;

(46) roads: general, 30 CFR 816.150;

(47) primary roads, 30 CFR 816.151;

(48) utility installations, 30 CFR 816.180;

(49) support facilities, 30 CFR 816.181;

(50) interpretative rules related to general performance standards, 30 CFR 816.200; and

(51) The following federal regulations are deleted entirely;

(a) disposal of excess spoil: valley fills/head of hollow fills, 30 CFR 816.72

(b) disposal of excess spoil: durable rock fills, 30 CFR 816.73; and

(d) permanent program performance standards—underground mining activities, 30 CFR Part 817;

(1) Signs and markers, 30 CFR 817.11, a subsection (g) shall be added to 30 CFR 817.11 which reads: “Increment boundary markers. Increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 1988 Supp. 49-406(h)”;

(2) “subchapter” shall be replaced by “K.A.R. 47-9-1(d)”;

(3) casing and sealing of exposed underground openings, 30 CFR 817.13;

(4) casing and sealing of underground openings: temporary, 30 CFR 817.14;

(5) casing and sealing of underground openings: permanent, 30 CFR 817.15;

(6) topsoil and subsoil, 30 CFR 817.22;

(7) hydrologic balance: protection, 30 CFR 817.41;

(8) hydrologic balance: water quality standards and effluent limitations, 30 CFR 817.42;

(9) diversions, 30 CFR 817.43;

(10) hydrologic balance: sediment control measures, 30 CFR 817.45;

(11) hydrologic balance: siltation structures, 30 CFR 817.46;

(12) hydrologic balance: discharge structures, 30 CFR 817.47;

(13) impoundments, 30 CFR 817.49;

(14) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 CFR 817.56;

(15) hydrologic balance: stream buffer zone, 30 CFR 817.57;

(16) coal recovery, 30 CFR, 817.59;

(17) use of explosives: general requirements, 30 CFR 817.61;

(18) use of explosives: preblasting survey, 30 CFR 817.62;

(19) use of explosives: general performance standards, 30 CFR 817.64;

(20) use of explosives: blasting signs, warnings, and access control, 30 CFR 817.66;

(21) use of explosives: control of adverse effects, 30 CFR 817.67;

(22) use of explosives: records of blasting operations, 30 CFR 817.68;

(23) disposal of excess spoil: general requirements, 30 CFR 817.71;

(24) disposal of excess spoil: preexisting benches, 30 CFR 817.74;

(25) coal mine waste: general requirements, 30 CFR 817.81;

(26) coal mine waste: refuse pile, 30 CFR 817.83;

(27) coal mine waste: impounding structures, 30 CFR 817.84;

(28) coal mine waste: burning and burn waste utilization, 30 CFR 817.87;

(29) disposal of noncoal mine waste, 30 CFR 817.89;

(30) stabilization of surface areas, 30 CFR 817.95;

(31) protection of fish, wildlife, and related environmental values, 30 CFR 817.97;

(32) slides and other damage, 30 CFR 817.99;

(33) contemporaneous reclamation, 30 CFR 817.100;

(34) backfilling and grading: general requirements, 30 CFR 817.102;

(35) backfilling and grading: previously mined areas, 30 CFR 817.106;

(36) revegetation: general requirements, 30 CFR 817.111;

(37) revegetation: timing, 30 CFR 817.113;

(38) revegetation: mulching and other soil stabilizing practices, 30 CFR 817.114;

(39) revegetation: standards for success, 30 CFR 817.116;

(40) subsidence control, 30 CFR 817.121;

(41) subsidence control: public notice, 30 CFR 817.122;

(42) cessation of operations: temporary, 30 CFR 817.131;

(43) cessation of operations: permanent, 30 CFR 817.132;

(44) postmining land use, 30 CFR 817.133;

(45) roads: general, 30 CFR 817.150;

(46) primary roads, 30 CFR 817.151;

(47) utility installations, 30 CFR 816.180;

(48) support facilities, 30 CFR 816.181;

(49) interpretative rules related to general performance standards, 30 CFR 816.200; and

(50) The following federal regulations are deleted entirely:

(a) disposal of excess spoil: valley fills/head of hollow fills, 30 CFR 816.72

(b) disposal of excess spoil: durable rock fills, 30 CFR 816.73; and

(c) backfilling and grading: steep slopes; and

(e) Special permanent program performance standards—auger mining 30 CFR Part 819;

(1) Auger mining: general, 30 CFR 819.11;

(2) auger mining: coal recovery, 30 CFR 819.13;

(3) auger mining: hydrologic balance, 30 CFR 819.15;

(4) auger mining: subsidence protection, 30 CFR 819.17;

(5) auger mining: backfilling and grading, 30 CFR 819.19; and

(6) auger mining: protection of underground mining, 30 CFR 819.21.

(f) special permanent program performance standards—operations on prime farmland, 30 CFR Part 823;

(1) Responsibilities, 30 CFR 823.4;

(2) applicability, 30 CFR 823.11;

(3) soil removal and stockpiling, 30 CFR 823.12;

(4) soil replacement, 30 CFR 823.14; and

(5) revegetation and restoration of soil productivity, 30 CFR 823.15.

(g) permanent program performance standards—coal preparation plants not located within the permit area of a mine, 30 CFR Part 827;

(1) General requirements, 30 CFR 827.11;

(2) coal preparation plants: performance standards, 30 CFR 827.12; and

(3) coal preparation plants: interim performance standards, 30 CFR 827.13.

(h) special permanent program performance standards—in situ processing, 30 CFR Part 828;

(1) In situ processing: performance standards, 30 CFR 828.11; and

(2) in situ processing: monitoring, 30 CFR 828.12.

(i) The following terms shall be replaced with the indicated terms wherever they appear in the text of rules and regulations adopted by reference under this section:

(1) “Subchapter K” shall be replaced by “K.A.R. 47-9-1.”

(2) “Director” or “regional director” shall be replaced by “secretary.”

(3) “Subchapter G” shall be replaced by “these rules and regulations.”

(4) “Subchapter J” shall be replaced by “article 8 of chapter 47 of the Kansas administrative rules and regulations.”

(5) “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(6) “This part” or “30 CFR Parts 816 through 828” shall be replaced by “K.A.R. 47-9-1.”

(7) “This chapter” or “subchapter C” shall be replaced by “these rules and regulations.” (Authorized by K.S.A. 1988 Supp. 49-405; implementing K.S.A. 1988 Supp. 49-405, 49-408, 49-409, 49-411, 49-413, 49-415, 49-429; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991.)

47-9-2. **Revegetation.** The permittee may be requested by the secretary or secretary’s designee to cut the vegetative cover, remove rocks that are nine inches or larger, or carry out any other measures which promote the control and revegetation of the permit area consistent with the approved postmining land use. (Authorized by

K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-409; effective May 1, 1985; amended Feb. 11, 1991.)

47-9-3. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-408, 49-409, 49-411, 49-413, 49-415, 49-429; effective May 1, 1985; revoked May 1, 1986.)

47-9-4. **Interim performance standards; adoption by reference.** (a) The following parts and sections of the federal rules and regulations of the office of surfacing mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted, as rules and regulations of the secretary, as they existed on July 1, 1990, except as indicated:

- (1) Definitions, 30 CFR 710.5;
- (2) applicability, 30 CFR 710.11(a);
- (3) signs and markers, 30 CFR 715.12;
- (4) postmining use of land, 30 CFR 715.13;
- (5) backfilling and grading, 30 CFR 715.14;
- (6) disposal of excess spoil, 30 CFR 715.15, deleting subsection (c);
- (7) topsoil handling, 30 CFR 715.16;
- (8) protection of the hydrologic system, 30 CFR 715.17;
- (9) dams constructed of or impounding waste material, 30 CFR 715.18;
- (10) revegetation, 30 CFR 715.20;
- (11) interpretative rules related to general performance standards, 30 CFR 715.200; and
- (12) prime farmland, 30 CFR 716.7.

(b) "This part," "section 716.2 of this chapter," "part 715 of this chapter" or "this chapter" shall be replaced by "these rules and regulations" wherever they appear.

(c) An operator shall comply with the interim performance standards in an interim permit area, unless the secretary has approved, in writing, an operator's request to adhere to an applicable permanent program performance standard or other applicable substantive rule and regulation. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1986; amended Feb. 11, 1991.)

Article 10.—UNDERGROUND MINING

47-10-1. **Adoption by reference; underground mining.** (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States depart-

ment of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed in effect on July 1, 1990:

(1) Underground mining permit applications—minimum requirements for information on environmental resources, 30 CFR Part 783, deleting 30 CFR 783.1, 783.2, and 783.10;

(2) Underground mining permit applications—minimum requirements for reclamation and operation plans, 30 CFR Part 784, deleting 30 CFR 784.1, 784.2, and 784.10, and the phrase in 784.20(g)(2) "to the extent required under State Law."

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Subchapter K of this chapter" or "subchapter K" shall be replaced by "K.A.R. 47-9-1."

(2) "Subchapter B of this chapter" or "subchapter B" shall be replaced by "K.A.R. 47-9-4."

(3) "Section 515 and 516 of the act" shall be replaced by "K.S.A. 1989 Supp. 49-405a, 49-408 to 49-413, inclusive, and 49-429."

(4) "Subchapter J of this chapter" or "subchapter J" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations."

(5) "This chapter" shall be replaced by "these rules and regulations."

(6) "30 CFR Parts 773 and 775" shall be replaced by "K.A.R. 47-3-42(a)(42) to (46), and (48) inclusive, K.A.R. 47-6-6, K.S.A. 49-407(d), K.S.A. 1989 Supp. 49-416a, 49-422a, and article 4 of chapter 47 of the Kansas administrative rules and regulations." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-429; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991.)

Article 11.—SMALL OPERATOR ASSISTANCE PROGRAM

47-11-1 to 47-11-7. (Authorized by K.S.A. 1980 Supp. 49-405, 49-406; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-11-8. **Small operator assistance program; adoption by reference.** (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United

States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed on July 1, 1990, except as otherwise indicated:

- (1) Definitions, 30 CFR 795.3;
- (2) eligibility for assistance, 30 CFR 795.6;
- (3) filing for assistance, 30 CFR 795.7;
- (4) application approval and notice, 30 CFR 795.8;
- (5) program services and data requirements, 30 CFR 795.9;
- (6) qualified laboratories, 30 CFR 795.10;
- (7) assistance funding, 30 CFR 795.11; and
- (8) applicant liability, 30 CFR 795.12.

(b) The following terms shall be replaced with the indicated terms, wherever they appear:

- (1) "Act" shall be replaced by "state act."
- (2) "This chapter" shall be replaced by "these rules and regulations."
- (3) "This part" shall be replaced by "K.A.R. 47-11-8." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-406, as amended by L. 1990, Ch. 194, sec. 1; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991.)

Article 12.—LANDS UNSUITABLE FOR SURFACE MINING

47-12-1 to 47-12-3. (Authorized by K.S.A. 1980 Supp. 49-405, 49-405b; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-12-4. **Lands unsuitable for surface mining; adoption by reference.** (a) The following sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed on July 1, 1990:

- (1) Definitions, 30 CFR 761.5;
- (2) areas where mining is prohibited or limited, 30 CFR 761.11, deleting subsection (b);
- (3) procedures, 30 CFR 761.12, deleting subsection (c);
- (4) definitions, 30 CFR 762.5;
- (5) criteria for designating lands as unsuitable, 30 CFR 762.11;
- (6) additional criteria, 30 CFR 762.12;

(7) land exempt from designation as unsuitable for surface coal mining operations, 30 CFR 762.13;

(8) exploration on land designated as unsuitable for surface coal mining operations, 30 CFR 762.14;

(9) petitions, 30 CFR 764.13;

(10) initial processing, recordkeeping, and notification requirements, 30 CFR 764.15;

(11) hearing requirements, 30 CFR 764.17;

(12) decision, 30 CFR 764.19;

(13) data base and inventory system requirements, 30 CFR 764.21;

(14) public information, 30 CFR 764.23;

(15) regulatory authority responsibility for implementation, 30 CFR 764.25; and

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Sections 775.11 and 775.13 of this chapter" shall be replaced by "K.S.A. 49-407(d), 49-416a, 1989 Supp. 49-422a, and article 4 of chapter 47 of the Kansas administrative regulations."

(2) "Sections 522(a)(2) and (3)" shall be replaced by "K.S.A. 1989 Supp. 49-405b(a)(1) and (2)."

(3) "This chapter" shall be replaced by "these rules and regulations."

(4) "Section 526(e) of the act and Section 775.13 of this chapter" shall be replaced by "K.S.A. 1989 Supp. 49-422a and K.S.A. 49-426."

(5) "Section 522 of the act" or "section 522(e) of the act" shall be replaced by "K.S.A. 1989 Supp. 49-405b."

(6) "Section 701(28) of the act" shall be replaced by "K.S.A. 1989 Supp. 49-403(s)."

(7) "Part 761, 762, or 764" shall be replaced by "K.A.R. 47-12-4."

(8) "Part 722 of this chapter" shall be replaced by "K.A.R. 47-7-2."

(9) "Act" shall be replaced by "state act."

(10) "This part" or "this subchapter" shall be replaced by "K.A.R. 47-12-4." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405b, 49-422a and 49-426; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991.)

Article 13.—TRAINING, CERTIFICATION AND RESPONSIBILITIES OF BLASTERS AND OPERATORS

47-13-1 to 47-13-3. (Authorized by K.S.A. 1980 Supp. 49-405, 49-405a; effective May

1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-13-4. Training and certification of blasters; adopted by reference. (a) The provisions of the federal rules and regulations of the office of surface mining, United States department of the interior, contained in 30 CFR part 850 and promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as it existed on July 1, 1990, except that 30 CFR 850.10 and 850.12 shall be deleted.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

- (1) "Act" shall be replaced by "state act."
- (2) Definition, 30 CFR 850.5.
- (3) Training, 30 CFR 850.13.
- (4) For the purposes of 30 CFR 850.15(a) only, "regulatory authority" shall be replaced by "state fire marshal."

(5) For the purposes of 30 CFR 850.14 only, "regulatory authority" shall be replaced by "secretary approved blaster training program director."

(6) The term "secretary approved blaster training program director" means the person who is in charge of a given blaster training program which has been specifically approved by the secretary as being in accordance with the state act, the rules and regulations, and the state program. (Authorized by and implementing K.S.A. 1989 Supp. 49-405 and 49-405a; effective May 1, 1985; amended Feb. 11, 1991.)

47-13-5. Responsibilities of operators and blasters-in-charge. (a) Each operator shall:

- (1) designate a blaster-in-charge for each blast to be detonated in surface coal mining and reclamation operations;
- (2) ensure that the designated blaster-in-charge is properly certified;
- (3) ensure that all employees who perform blasting tasks under the supervision of a blaster-in-charge have adequate training;
- (4) limit the size of a blasting crew to 12 persons, supervised by a blaster-in-charge who is continuously and readily accessible to crew members in preparing and executing a blast. A larger blasting crew may be approved by the secretary if:

(A) unusual circumstances or mining methods are involved; and

(B) the operator ensures that the blaster-in-charge can:

- (i) provide adequate, direct supervision to crew members;
- (ii) remain in control of blast design, preparation, and execution; and
- (iii) assure that blasting complies with the applicable regulations; and
- (5) ensure that each blaster-in-charge shall supervise no more than one crew at any given time.

(b) Each blaster-in-charge shall:

- (1) be certified by the state fire marshal for all blasting operations conducted in the state of Kansas;
- (2) ensure that blast design and execution meet the applicable standards;
- (3) directly supervise blast preparation and execution at the blast site to ensure that such standards are met;
- (4) be present at the site when the blast is detonated;

(5) ensure that all members of blasting crews have adequate training to perform assigned tasks in compliance with the applicable standards; and

(6) limit to 12 the number of persons being supervised at any given time in preparing and executing a blast at one operational pit at the site.

(c) After instructions from and under the direct supervision of the blaster-in-charge members of the blasting crew may be authorized to:

- (i) perform general blasting operations;
- (ii) load and unload explosives for use in blasting;
- (iii) transport explosives at or near the job site;
- (iv) load explosives into drill holes; and
- (v) stem or otherwise prepare explosives for detonation.

(d) The blaster-in-charge shall retain full responsibility for all blasting and for the use of explosives. These responsibilities shall include:

- (1) keeping blasting logs and records;
- (2) supervising the blasting-related activities of the workers in his or her charge; and
- (3) ensuring that all persons under his or her supervision have the training necessary to perform their assigned tasks safely and in accordance with the applicable regulations. (Authorized by K.S.A. 1989 Supp. 49-405 and 49-405a; implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1985; amended Feb. 11, 1991.)

47-13-6. Training. (a) Each person seeking a blaster certification pursuant to K.A.R. 47-

13-4 shall document successful completion of a department-approved blaster training program.

(b) Proof of completion of an approved blaster training program shall be filed with an applicant's application for certification by the state fire marshal. (Authorized by and implementing K.S.A. 1989 Supp. 49-405 and 49-405a; effective May 1, 1985; amended Feb. 11, 1991.)

Article 14.—EMPLOYEE FINANCIAL INTERESTS

47-14-1 to 47-14-6. (Authorized by K.S.A. 1980 Supp. 49-404; effective May 1, 1980; revoked, E-81-30, Oct. 8, 1980; revoked May 1, 1981.)

47-14-7. **Employee financial interest; adoption by reference.** (a) Subject to the provisions of subsection (b), the following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed on July 1, 1990:

(1) Responsibility, 30 CFR 705.4(a) and (c), deleting subsection (b);

(2) Penalties, 30 CFR 705.6(b), deleting subsection (a);

(3) Who shall file, 30 CFR 705.11(a), (b), (c), and (d), deleting subsection (e);

(4) When to file, 30 CFR 705.13;

(5) Where to file, 30 CFR 705.15;

(6) What to report, 30 CFR 705.17;

(7) Gifts and gratuities, 30 CFR 705.18;

(8) Resolving prohibited interests, 30 CFR 705.19(a), deleting subsection (b); and

(9) Appeals procedures, 30 CFR 705.21;

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Act" shall be replaced by the term "state act"; and

(2) "Head of each state regulatory authority," and "head of the state regulatory authority" shall be replaced by the term "secretary of the Kansas department of health and environment." (Authorized by K.S.A. 1989 Supp. 49-404; implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

Article 15.—INSPECTIONS AND ENFORCEMENT

47-15-1. (Authorized by K.S.A. 1980 Supp. 49-405, 49-405d; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; revoked May 1, 1984.)

47-15-1a. **Inspection and enforcement; adoption by reference.** (a) The following parts and sections of the federal rules and regulations of the office of surface mining, United States department of the interior, promulgated pursuant to the surface mining control and reclamation act of 1977, are hereby adopted by reference as rules and regulations of the secretary, as they existed on July 1, 1990, with exceptions as indicated:

(1) Inspections by state regulatory authority, 30 CFR 840.11;

(2) Availability of records, 30 CFR 840.14;

(3) Definitions, 30 CFR 843.5;

(4) Right of entry, 30 CFR 840.12;

(5) Review of adequacy and completeness of inspections, 30 CFR 842.14;

(6) Review of decision not to inspect or enforce, 30 CFR 842.15, except that the phrase in subsection (b) of 30 CFR 842.15, "or disclosure is required under the freedom of information act or other federal law", shall be deleted;

(7) Cessation orders, 30 CFR 843.11;

(8) Notice of violations, 30 CFR 843.12, except that the phrase in subsection (a) of 30 CFR 843.12, "carried out during the enforcement of a federal program or federal lands program or during federal enforcement of a state program under sections 504(b) or 521(b) of the act and part 733 of this chapter" shall be deleted. Paragraph (a)(2) of 30 CFR 843.12 shall be deleted;

(9) Suspension or revocation of permits, 30 CFR 843.13, except that the phrase in paragraph (a)(4)(i)(A) of 30 CFR 843.13, "or a federal lands program," and paragraphs (a)(4)(i)(B) and (C) of 30 CFR 843.13 shall be deleted;

(10) Informal public hearings, 30 CFR 843.15;

(11) Formal review of citations, 30 CFR 843.16;

(12) Compliance conference 30 CFR 843.20; and

(13) Compliance conference, 30 CFR 840.16.

(b) The following terms shall be replaced with the indicated terms wherever they appear:

(1) "Act" shall be replaced by "state act."

(2) "This chapter" shall be replaced by "these rules and regulations."

(3) "Federal" shall be replaced by "state."

(4) "Office" shall be replaced by "secretary or secretary's designee."

(5) "Regional director" shall be replaced by "secretary."

(6) "43 CFR Part 4" shall be replaced by "K.S.A. 1989 Supp. 49-416a."

(7) "Office of hearings and appeals" shall be replaced by "department."

(8) "30 CFR Part 845" shall be replaced by "article 5 of chapter 47 of the Kansas administrative rules and regulations."

(9) "43 CFR 4.1281" shall be replaced by "K.S.A. 1989 Supp. 49-416a(a)."

(10) "Section 521(a)(5)" shall be replaced by "K.S.A. 1989 Supp. 49-405(m)(4)."

(11) "Section 521(a)(2)" shall be replaced by "K.S.A. 49-405(m)(1)."

(12) "Section 517" shall be replaced by "K.S.A. 1989 Supp. 49-404, 49-405, and 49-405d."

(13) "Section 518" shall be replaced by "K.S.A. 1989 Supp. 49-405c."

(14) "Section 521" shall be replaced by "K.S.A. 1989 Supp. 49-405(m)."

(15) "Section 518(b), 521(a)(4), or 525" shall be replaced by "K.S.A. 1989 Supp. 49-405c(b), 49-405(m)(3), or 49-416a."

(16) "30 CFR 842.12" or "842.12" shall be replaced by "K.A.R. 47-15-7 and K.A.R. 47-15-8."

(17) "Section 520" shall be replaced by "K.S.A. 1989 Supp. 49-426."

(18) "Section 525" shall be replaced by "K.S.A. 49-416a."

(19) "30 CFR 842.11" or "section 842.11" shall be replaced by "K.A.R. 47-15-1a(a)(1)." (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-404, 49-405, 49-405c, 49-405d, 49-406, as amended by L. 1990, Ch. 194, sec. 1, 49-416, 49-416a, 49-427; effective May 1, 1985; amended May 1, 1986; amended Feb. 11, 1991.)

47-15-2. (Authorized by K.S.A. 1980 Supp. 49-405, effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; revoked May 1, 1985.)

47-15-3. Lack of information; inability to comply. (a) A notice of violation, cessation order, show cause order, or order revoking or suspending a permit shall not be vacated because it is subsequently determined that the secretary did not have information sufficient to justify an inspection.

(b) A notice of violation or cessation order shall not be vacated because of inability to comply.

(c) Inability to comply shall not be considered in determining whether a pattern of violation exists.

(d) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of the civil penalty and the duration of the suspension of a permit. (Authorized by K.S.A. 1989 Supp. 49-405, 49-405c; implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

47-15-4. Injunctive relief. The attorney general may be requested by the secretary to institute any civil action for relief, including a permanent or temporary injunction, a restraining order or any other order, whenever, in violation of the state act, these rules and regulations, or any condition of an exploration approval or permit anyone does the following:

(a) violates or fails or refuses to comply with any order or decision of the secretary or secretary's designee;

(b) Interferes with, hinders or delays the secretary or secretary's designee in carrying out provisions of the state act or these rules and regulations;

(c) Refuses to:

(1) admit the secretary or secretary's designee to a mine;

(2) permit inspection of a mine by the secretary or secretary's designee;

(3) furnish any required information or report;

(4) permit access to or copying of any required records; or

(5) Refuses to permit inspection of monitoring equipment. (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991.)

47-15-5 and 47-15-6. (Authorized by K.S.A. 1982 Supp. 49-405, implementing K.S.A. 1982 Supp. 49-405, 49-405d; effective May 1, 1984; revoked May 1, 1985.)

47-15-7. State inspections. (a) Inspection of surface coal mining and reclamation operations shall be conducted by the secretary or secretary's designee as necessary to determine whether the permittee has complied with any no-

tice of violation or cessation order issued during an inspection authorized under this regulation.

(b) A state inspection shall be conducted immediately by the secretary or secretary's designee to enforce any requirement of the state act, these rules and regulations, the regulatory program, or any condition of a permit or an exploration approval.

(c) When the secretary or secretary's designee has reason to believe, on the basis of information available to the department other than information resulting from a previous state inspection, that there exists a violation of the state act exists, these rules and regulations, the regulatory program, or any condition of a permit or an exploration approval or that any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources, then the secretary or secretary's designee shall take appropriate action to have the violation abated. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-405d; effective May 1, 1984; amended Feb. 11, 1991.)

47-15-8. Citizen's requests for state inspections. (a) Any person may request a state inspection under K.A.R. 47-15-7(b) by furnishing to the secretary or secretary's designee with a signed, written statement or an oral report followed by a signed, written statement. The statement shall include:

(1) the reasons for believing a violation, condition, or practice referred to in K.A.R. 47-15-7(b) exists; and

(2) a phone number and address where the person can be contacted.

(b) Upon request, the identity of any person supplying information to the secretary or secretary's designee relating to a possible violation or imminent danger or harm shall remain confidential, unless that person elects to accompany the inspector on the inspection.

(c) If a state inspection is conducted as a result of information provided to the secretary or secretary's designee as described in subsection (a) of this regulation, the person shall be notified as far in advance as practicable as to when the inspection is to occur. The person shall be allowed to accompany the secretary or secretary's designee. During the inspection, such a person shall have a

right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which that person supplied information. However, the person shall be in the presence of and under the control, direction and supervision of the secretary or secretary's designee while on the mine property. This right of entry shall not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within 10 days of the state inspection or, if there is no inspection, within 15 days of receipt of the person's written statement, the secretary or secretary's designee shall send the person the following:

(1) If an inspection was made, a description of the enforcement action taken. This description may consist of copies of the state inspection report and of all notices of violation and cessation orders issued as a result of the inspection or an explanation as to why no enforcement action was taken;

(2) If no state inspection was conducted, an explanation of the reason why an inspection was not considered to be necessary; and

(3) An explanation of the person's right, if any, to informal review of the action or inaction of the secretary or secretary's designee under K.A.R. 47-15-1a(a)(6).

(e) Copies of all materials in paragraphs (d)(1) and (d)(2) of this regulation, shall be given by the secretary or secretary's designee to the person alleged to be in violation within the time limits specified in those paragraphs, except that the name of the person shall be removed unless disclosure of the person's identity is permitted under subsection (b) of this regulation. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-405d; effective May 1, 1984; amended May 1, 1985; amended Feb. 11, 1991.)

47-15-9 to 47-15-14. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-405, 49-405d; effective May 1, 1984; revoked May 1, 1985.)

47-15-15. Service of notices of violations and cessation orders. (a) Promptly after issuance, each notice of violation or cessation order shall be served on the person to whom it is directed or to that person's designated agent, as follows:

(1) A copy of each notice of violation or cessation order may be tendered, at the coal exploration or surface coal mining and reclamation op-

eration, to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the notice or order. If no one in charge can be found, the copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) In the alternative, service may be made by sending a copy of the notice or order by certified mail or by delivering the copy by hand to the person to whom it is issued or to the person's designated agent. Service shall be complete upon tender of the notice or order or upon certified mailing of the notice or order and service shall not be deemed incomplete because of refusal to accept.

(b) A show cause order may be served on the person to whom it is issued in either manner provided in subsection (a) of the regulation.

(c) Designation by any person of an agent for service of notices and orders shall be made in writing to the secretary or secretary's designee.

(d) The secretary or secretary's designee may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area, including the owner of the fee, a corporate officer of the permittee or entity conducting coal exploration, or the bonding company. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-405d; effective May 1, 1984; amended Feb. 11, 1991.)

47-15-16. (Authorized by K.S.A. 1982 Supp. 49-405; implementing K.S.A. 1982 Supp. 49-405, 49-405d, 49-416a; effective May 1, 1984; revoked May 1, 1985.)

47-15-17. **Maintenance of permit areas.** The secretary or secretary's designee shall require the permittee to cut vegetative growth if necessary to facilitate inspection of all permit areas to insure compliance with the state act and the rules and regulations. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-405, 49-405d; effective May 1, 1985; amended Feb. 11, 1991.)

Article 16.—RECLAMATION

47-16-1. **Eligible lands and water.** (a) Coal mined lands and associated waters are eligible for reclamation activities if:

(1) They were mined or affected by mining processes;

(2) they were mined prior to August 3, 1977, and were left or abandoned in an unreclaimed or inadequately reclaimed condition; and

(3) there is no continuing responsibility for reclamation by the operator, permittee or agent of the permittee under statutes of the state or federal government or a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation.

(b) Lands and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities if all reclamation with respect to abandoned coal mine land and water has been accomplished within the state.

(c) "Left or abandoned in an unreclaimed or inadequately reclaimed condition" means land and water:

(1) which were mined or affected by such mining, wastebanks, processing, or other mining processes prior to August 3, 1977, and on which all mining has ceased;

(2) which continue, in their present condition, to substantially degrade the quality of the environmental, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public;

(3) for which there is no continuing reclamation responsibility under state or federal laws. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-428; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-2. **Reclamation project evaluation.** Proposed reclamation projects and completed reclamation work shall be evaluated using the factors stated in this section to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the objectives of K.S.A. 1989 Supp. 49-428. Completed reclamation shall be evaluated using these factors to identify conditions which should be avoided, corrected, or improved in plans for future reclamation work. The factors shall include:

(a) The need for reclamation work to accom-

plish one or more specific objectives as stated in K.S.A. 1989 Supp. 49-428;

(b) the availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts;

(c) the specific benefits of the reclamation work for the area including, but are not limited to:

(1) Protection of human life, health, or safety;
(2) protection of the environment, including air and water quality, fish and wildlife, plant habitat, visual beauty, historic, cultural or recreation resources, and abatement of erosion sedimentation;

(3) protection of public or private property;
(4) improvement of environmental conditions which may be considered to generally enhance the quality of human life;

(5) improvement of natural resource use, including:

(A) increasing productivity capability of the land;

(B) enhancing the use of surrounding lands consistent with existing land use plans;

(C) providing for construction or enhancement of public facilities;

(D) providing for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located;

(6) technologies which can be used to reclaim areas disturbed by mining.

(d) any additional adverse impacts to people or the environment during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation;

(e) the costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation;

(f) any additional coal or other mineral or material resources within the project area where there is:

(1) a reasonable probability that the desired reclamation could be accomplished in conjunction with future mining; or

(2) a need to assure that the resource is not lost as a result of reclamation and the benefits of reclamation are not negated by subsequent, essential resource recovery operations;

(g) compatability of post-reclamation land uses with;

(1) land uses in the surrounding area;

(2) applicable state, regional, and local land use plans and laws; and

(3) the needs and desires of the community where the project is located.

(h) the probability that post-reclamation management, maintenance and control of the area will be consistent with the reclamation completed. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-428; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-3. Consent to entry. (a) All reasonable actions to obtain prior written consent from the owner of record of the land or property to be entered shall be taken by the secretary or secretary's designee.

(b) The consent shall consist of a signed statement by the owner or the owner's authorized agent which includes:

(1) a legal description of the land to be entered;

(2) the nature of work to be performed on the lands; and

(3) any special conditions for entry.

(c) This statement shall not include any commitment by the secretary to perform reclamation work or compensate the owner for entry. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-432; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-4. Entry for study or exploration. (a) Any property may be entered by the secretary or secretary's designee for the purpose of conducting studies or exploratory work to determine:

(1) the existence of adverse effects of past coal mining practices; and

(2) the feasibility of restoration, reclamation, abatement, control, or prevention of adverse effects.

(b) If the owner will not give consent to entry; notice shall be given to the owner in writing of the secretary's intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety, or general welfare. The notice shall be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the

owner is not known, or if the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public. In addition, the notice shall be published once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-432; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-5. Entry and consent to re-claim. (a) Notice shall be given of the secretary's intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by K.S.A. 1989 Supp. 49-432. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public. In addition, the notice shall be published once in a newspaper of general circulation in the locality in which the land is located. The notice shall include a statement of where the findings required by K.S.A. 1989 Supp. 49-432 may be inspected or obtained.

(b) Any land where an emergency exists and on any other land necessary to gain access to the land where an emergency exists may be entered by the secretary to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices and to do all things necessary to protect the public health, safety, or general welfare.

(1) A written finding shall be made by the secretary with reasons supporting the conclusion that an emergency exists, as defined in section 410 of the United States surface mining control and reclamation act prior to entry.

(2) Notice to the owner shall not be required prior to entry for emergency reclamation. Reasonable efforts to notify the owner and obtain prior consent shall be made by the secretary; consistent with the existing emergency conditions. Proper written notice shall be given to the owner as soon after entry as practical. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-432; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-6. Liens. (a) A lien shall be placed by the secretary on land reclaimed if the reclamation results in a significant increase in the fair

market value based on the pre- and post-reclamation appraisals; except that, the lien may be waived by the secretary if:

(1) the lien amount would be less than the cost of filing the lien;

(2) the reclamation work primarily increases the health, safety, or environment of the community or area affected; or

(3) the reclamation is necessitated by an unforeseen occurrence and the work performed to restore the land will not significantly increase the market value of the land as it existed immediately before the occurrence.

(b) No lien shall be placed against land reclaimed if the current owner of the property acquired title prior to May 2, 1977 and did not consent to, participate in, or exercise control over the mining operation which caused or contributed to the unreclaimed conditions.

(c) If a lien is to be filed, within six months after completion of the reclamation work, a statement shall be filed by the secretary in the office having responsibility under applicable law for recording judgments and placing liens against land. The statement shall include:

(1) an account of monies expended for the reclamation work; and

(2) a notarized summary of the appraisal report.

(d) The increase in the appraised value of the property shall constitute the amount of the lien recorded and shall have priority second only to a real estate tax lien. Provided, the landowner is:

(1) notified prior to the time of filing the lien of the amount of the proposed lien; and

(2) allowed a reasonable time to pay that amount in lieu of filing the lien. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-428; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-7. Appraisals. (a) In order for a lien to be filed under K.A.R. 47-16-6:

(a) A notarized appraisal of the fair market value of the land as it is shall be obtained from an independent professional appraiser before any reclamation activities are started.

(b) A second, notarized appraisal of the fair market value of the land shall be obtained after all reclamation activities have been completed.

(c) The landowner shall receive a statement of

any increase in market value, an itemized statement of reclamation expenses and a notice that a lien will be filed against the property. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-428; effective May 1, 1983; amended Feb. 11, 1991.)

47-16-8. **Satisfaction of liens.** (a) A lien shall be satisfied to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain

as a lien on the property and shall be satisfied in accordance with this paragraph.

(b) The secretary shall maintain or renew liens from time to time as may be required.

(c) Monies derived from the satisfaction of liens established under this part shall be deposited in the state abandoned mined land fund. (Authorized by K.S.A. 1989 Supp. 49-405; implementing K.S.A. 1989 Supp. 49-428; effective May 1, 1983; amended Feb. 11, 1991.)

State of Kansas

Department of Health
and Environment

Permanent Administrative
Regulations

Article 1.--GENERAL

Regulations Regulations 47-1-1 (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended Feb. 11, 1991; revoked May 2, 1997.)

47-1-3 Communication. Each application for a surface mining permit required to be filed with the secretary shall be filed in the office of the surface mining section within the time limits for such filing. Each document so addressed or filed shall be deemed to be officially received by the secretary when actually delivered at the office of the surface mining section. Each application shall be accompanied by appropriate fees. (Authorized by K.S.A. 49-405; implementing K.S.A. 1989 Supp. 49-406; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

47-1-4 (Authorized by and implementing K.S.A. 1989 Supp. 49-405; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1980; amended May 1, 1986; amended Feb. 11, 1991; revoked May 2, 1997.)

47-1-8 Petitions to initiate rulemaking. (a) Any person may petition the secretary to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the state act. Each petition shall be submitted to the chief of the surface mining section.

(b) Each petition shall contain a concise statement of the facts, technical justification, and law that requires issuance, amendment, or repeal of a regulation and shall indicate whether or not the petitioner desires a public hearing.

(c) The secretary or the secretary's designee shall determine whether or not the petition sets forth facts, technical justification, and law that provides a reasonable basis for conducting a hearing to consider issuance, amendment, or repeal of a regulation. Facts, technical justification, or law previously considered in a petition or in rulemaking on the same issue shall not provide a reasonable basis.

(d) If the secretary or secretary's designee determines that the petition has a reasonable basis, a notice shall be published seeking comments from the public on the proposed change. A public hearing, an investigation, or other necessary action may be taken by the secretary or secretary's designee to determine whether or not the petition should be granted.

(e) A written decision either granting or denying the petition shall be issued by the secretary or secretary's designee within 90 days after its receipt by

the surface mining section.

(1) If the petition is granted, the rulemaking process shall be initiated by the secretary.

(2) If the petition is denied, the petitioner shall be notified in writing by the secretary, setting forth the reasons for denial. (Authorized by and implementing K.S.A. 49405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

47-1-9 Notice of citizen suits. (a) Each person who intends to initiate a civil action on the person's own behalf under K.S.A. 49-426(a)(2) shall give notice of this intent as follows:

(1) a copy of the notice shall be sent by certified mail to the chief of the surface mining section and the secretary;

(2) a copy of the notice shall be sent by first-class mail to the field office director of the office of surface mining, United States department of the interior; and

(3) a copy of the notice shall be sent by certified mail to the alleged violator if the complaint alleges a violation of the state act or any regulation, order, or permit issued under the state act.

(b) Service of the notice shall be complete upon receipt by the person being notified.

(c) Each person giving notice regarding an alleged violation shall state the following to the extent known:

(1) Sufficient information to identify the provision of the state act, rule or regulation, order, or permit allegedly violated;

(2) the act or omission constituting the alleged violation;

(3) the name, address, and telephone numbers of the person or persons responsible for the alleged violation;

(4) the date, time, and location of the alleged violation;

(5) the name, address, and telephone number of the person giving notice; and

(6) the name, address, and telephone number of legal counsel, if any, of the person giving notice.

(d) Each person giving notice of an alleged failure by the secretary to perform a mandatory act or duty under the state act shall state the following to the extent known:

(1) the provision of the state act containing the mandatory act or duty allegedly not performed;

(2) sufficient information to identify the omission constituting the alleged failure to perform a mandatory act or duty;

(3) the name, address, and telephone number of the person giving notice; and

(4) the name, address, and telephone number of legal counsel, if any, of the person giving notice. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-426; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

47-1-10 (Authorized by and implementing K.S.A. 49-405; effective May 1, 1984; amended Feb. 11, 1991; revoked May 2, 1997.)

47-1-11 Permittee; preparation and submission of reports. The secretary or secretary's designee may require a permittee to do the following:

- (a) establish and maintain appropriate records;
- (b) make appropriate monthly reports;
- (c) install, use, and maintain any necessary monitoring equipment or methods and evaluate the results in accordance with those methods, at the locations, intervals, and in the manner prescribed; and
- (d) provide any other information relative to surface coal mining and reclamation operations that the secretary or secretary's designee deems reasonable and necessary. (Authorized by and implementing K.S.A. 49-405; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

Article 2.--MEANING OF TERMS

47-2-14 (Authorized by K.S.A. 1989 Supp. 49-405, and K.S.A. 1989 Supp. 49-406; as amended by L. 1990, Ch. 194, sec. 1; implementing K.S.A. 1989 Supp. 49-405; effective May 1, 1980; amended Feb. 11, 1991; revoked May 2, 1997.)

47-2-21 Employee defined. "Employee" means a person employed by the department who performs any function or duty under the state act, or a consultant who performs decision-making functions under the authority of state law or these regulations. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-404; effective May 1, 1980; amended May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-2-53 "Regulatory authority" or "state regulatory authority" defined. "Regulatory authority" or "state regulatory authority" means the department of health and environment, or the secretary's designee. (Authorized by and implementing K.S.A. 49-405; implementing K.S.A. 49-405 and K.S.A. 49-406; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

47-2-53a "Regulatory program" defined. "Regulatory program" means the state act and regulations adopted by the department and approved by the United States department of interior, office of surface mining reclamation and enforcement. (Authorized by and implementing K.S.A. 49-405; effective May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

47-2-58 "Significant, imminent environmental harm to land, air or water resources" defined. A "significant, imminent environmental harm to land, air or water resources" shall include the following elements.

- (a) An environmental harm is an adverse impact on land, air or water resources, including plant and animal life.
- (b) An environmental harm is imminent if a condition, practice, or violation exists that is causing harm or may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under these regulations and the state law.
- (c) An environmental harm is significant if that harm is appreciable and not immediately reparable. (Authorized by and implementing K.S.A. 49-405; effective

May 1, 1980; amended May 2, 1997.)

47-2-64 ``State act" defined. ``State act" means the Kansas mined-land conservation and reclamation act and amendments thereto. (Authorized by and implementing K.S.A. 49-405, 49-406; effective May 1, 1980; amended May 2, 1997.)

47-2-67 ``Surety bond" defined. ``Surety bond" means an indemnity agreement, in a specific sum payable to the Kansas department of health and environment and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Kansas. (Authorized by and implementing K.S.A. 49-405, and K.S.A. 49-406; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997.)

47-2-74 ``Public road" defined. ``Public road" means a thoroughfare open to the public that has been and is being used by the public for vehicular travel. (Authorized by K.S.A. 49-405, and implementing K.S.A. 49-405b; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 2, 1997.)

47-2-75 Definitions; adoption by reference. The following regulations as in effect on July 1, 1995 are adopted by reference except as otherwise indicated in this regulation: (a) Definitions, 30 CFR 700.5, except:

(1) ``regulatory authority" and ``state regulatory authority" shall be defined in K.A.R. 47-2-53;

(2) ``surface coal mining operations" shall be defined in K.S.A. 49-403(r);

(3) ``surface coal mining and reclamation operations" shall be defined in K.S.A. 49-403(q);

(4) the following shall be deleted from the definition of ``anthracite":

``Notices of changes made to this publication will be periodically published by the Office of Surface Mining in the Federal Register. This ASTM standard is on file and available for inspection at the OSM office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office and Field Office, and at the central office of the applicable State Regulatory Authority, if any. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, 1100 L St., N.W., Washington, D.C. Incorporation by reference provisions approved by the Director of the Federal Register February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981."

(5) ``regulatory program" shall be defined in K.A.R. 47-2-53a;

(6) ``director" means the director, office of surface mining reclamation and enforcement in the following instances:

(A) K.A.R. 47-3-42 (a)(37), adopting by reference 30 CFR 785.13;

(B) K.A.R. 47-14-7 (a)(1), adopting by reference 30 CFR 705.4 (a);

(C) K.A.R. 47-14-7 (a)(3), adopting by reference 30 CFR 705.11 (c) and (d);

(D) K.A.R. 47-14-7 (a)(4), adopting by reference 30 CFR 705.13;

(E) K.A.R. 47-14-7 (a)(5), adopting by reference 30 CFR 705.15;

(F) K.A.R. 47-14-7 (a)(8), adopting by reference 30 CFR 705.19 (a); and

(G) K.A.R. 47-14-7 (a)(9), adopting by reference 30 CFR 705.21. All other references to "the director" shall be replaced by "the secretary of the department of health and environment."

(7) "department" means the Kansas department of health and environment; and

(8) "secretary" means secretary of the Kansas department of health and environment.

(b) Definitions, 30 CFR 701.5, except:

(1) "imminent danger to the health and safety of the public" shall be defined in K.S.A. 49-403(m);

(2) "operator" shall be defined in K.S.A. 49-403(c);

(3) "permit" shall be defined in K.S.A. 49-403(n);

(4) "permit area" shall be defined in K.S.A. 49-403(o);

(5) "significant, imminent environmental harm to land, air or water resources" shall be defined in K.A.R. 47-258; and

(6) the following federal definitions shall be deleted entirely:

(A) "agricultural activities or farming";

(B) "alluvial valley floors";

(C) "arid and semiarid area";

(D) "essential hydrologic functions";

(E) "flood irrigation";

(F) "materially damage the quality and quantity of water";

(G) "rangeland";

(H) "special bituminous coal mines";

(I) "subirrigation";

(J) "undeveloped rangeland"; and

(K) "upland areas."

(c) Definitions, 30 CFR 705.5, except:

(1) "employee" shall be defined in K.A.R. 47-2-21; and

(2) "state regulatory authority" shall be defined in K.A.R. 47-2-53.

(d) Definitions, 30 CFR 773.5; and

(e) Definitions, 30 CFR 846.5, except:

(1) "federal program" shall be replaced by "state program";

(2) "section 521 of the act" shall be replaced by "K.S.A. 49-405";

(3) "act" shall be replaced by "state act";

(4) "secretary" shall be replaced by "secretary of the Kansas department of health and environment";

(5) "section 518(b)" shall be replaced by "K.S.A. 49-416a";

(6) "Section 703 of the act" shall be replaced by "K.S.A. 1995 Supp. 75-2973"; and

(7) "federal lands program. Federal enforcement pursuant to section 502 of the act and federal enforcement of a state program pursuant to section 521 of the act" shall be deleted. (Authorized by K.S.A. 49-404 and K.S.A. 49-405; implementing K.S.A. 49-401 et seq.; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997.)

Article 3.--APPLICATION FOR

MINING PERMIT 47-3-1 Application for mining permit. Each person who conducts or expects to conduct surface or underground coal mining and reclamation operations shall file an original and four copies of a complete and accurate application for a permit for those operations with the secretary at least 90 days before permit decision. (Authorized by K.S.A. 49-405 and K.S.A. 49-406; implementing K.S.A. 49-406; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1975; amended May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997.)

47-3-2 Application for mining permit; adoption by reference. (a) Each permit application submitted with a request for variances from the applicable regulations shall contain an outline of the proposed variances. The outline shall be indexed to the regulations and be placed at the beginning of the application documents.

(b) The following regulations as in effect on July 1, 1995 are adopted by reference, except as otherwise indicated in these regulations:

- (1) format and contents, 30 CFR 777.11;
- (2) reporting of technical data, 30 CFR 777.13;
- (3) maps and plans; general requirements, 30 CFR 777.14. The phrase "in accordance with section 710.12 of this chapter" shall be deleted; and
- (4) completeness, 30 CFR 777.15.

(c) The following terms shall be replaced with the indicated terms wherever they appear in the text of the federal regulations adopted by reference under K.A.R. 47-32:

- (1) "This chapter" or "this subchapter" shall be replaced by "these regulations."
- (2) "Parts 778, 779, and 780 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(1) to (35), inclusive."
- (3) "Part 785 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(36) to (41), inclusive."
- (4) "Parts 778, 783, and 784 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(1) to (8), inclusive," and "K.A.R. 47-10-1." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective May 1, 1980; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

47-3-3a Application for mining permit; maps. (a) Each map, plan, and cross section required for a permit application shall be certified by a qualified, licensed engineer and shall be updated as required by the secretary or secretary's designee.

(b) Each change in a facility or feature that would be caused by the proposed mining operations shall be shown in the maps and plans accompanying the permit application.

(1) A color code, or other method approved in writing by the secretary or secretary's designee, shall be used to indicate critical features of the permit area as follows:

- (A) green for areas of coal removal;
- (B) red for the boundary of the land affected, including access roads and haulageways;
- (C) brown for access roads and haulageways; and
- (D) blue for watercourses, impoundments, drainageways, and other water areas.

(2) A color code, or other method approved, in writing, by the secretary or secretary's designee, shall be used to indicate critical features of any reclamation plan as follows:

- (A) green for areas of proposed grassland;
- (B) red for the permit boundaries;
- (C) brown for any roads to be left through the disturbed area;
- (D) blue for proposed water impoundment and drainage;
- (E) yellow for proposed cropland; and
- (F) orange for proposed woodland. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

47-3-42 Application for mining permit; adoption by reference. (a) The following regulations as in effect on July 1, 1995 are adopted by reference except as otherwise indicated in these regulations:

- (1) identification of interests, 30 CFR 778.13;
- (2) violation information, 30 CFR 778.14. The term ``act" shall mean ``the surface mining control and reclamation act of 1977 (Pub. L. 95-87)" and amendments thereto;
- (3) right-of-entry information, 30 CFR 778.15;
- (4) status of unsuitability claims, 30 CFR 778.16;
- (5) permit term, 30 CFR 778.17(a);
- (6) insurance, 30 CFR 778.18;
- (7) proof of publication, 30 CFR 778.21;
- (8) facilities or structures used in common, 30 CFR 778.22;
- (9) responsibilities, 30 CFR 779.4. The phrase ``this part" shall be replaced by ``K.A.R. 47-3-42(a)(9) to (16), inclusive";
- (10) general requirements, 30 CFR 779.11;
- (11) general environmental resources information, 30 CFR 779.12;
- (12) climatological information, 30 CFR 779.18;
- (13) vegetation information, 30 CFR 779.19;
- (14) soil resources information, 30 CFR 779.21;
- (15) maps: general requirements, 30 CFR 779.24;
- (16) cross sections, maps, and plans, 30 CFR 779.25;
- (17) responsibilities, 30 CFR 780.4. The phrase ``this part" shall be replaced by ``K.A.R. 47-3-42(a)(17) to (35), inclusive";
- (18) operation plan: general requirements, 30 CFR 780.11;
- (19) operation plan: existing structures, 30 CFR 780.12;
- (20) operation plan: blasting, 30 CFR 780.13;
- (21) operation plan: maps and plans, 30 CFR 780.14;
- (22) air pollution control plan, 30 CFR 780.15;

- (23) fish and wildlife information, 30 CFR 780.16;
- (24) reclamation plan: general requirements, 30 CFR 780.18;
- (25) hydrologic information, 30 CFR 780.21;
- (26) geologic information, 30 CFR 780.22;
- (27) reclamation plan: land uses information, 30 CFR 780.23;
- (28) reclamation plan: siltation structures, impoundments, banks, dams, and embankments, 30 CFR 780.25;
- (29) reclamation plan: surface mining near underground mining, 30 CFR 780.27;
- (30) diversions, 30 CFR 780.29;
- (31) protection of public parks and historic places, 30 CFR 780.31;
- (32) relocation or use of public roads, 30 CFR 780.33;
- (33) disposal of excess spoil, 30 CFR 780.35;
- (34) road systems, 30 CFR 780.37;
- (35) support facilities, 30 CFR 780.38;
- (36) experimental practices mining, 30 CFR 785.13;
- (37) prime farmland, 30 CFR 785.17. The last sentence in 30 CFR 785.17(c)(1)(i) shall be deleted;
- (38) variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities, 30 CFR 785.18;
- (39) augering, 30 CFR 785.20;
- (40) coal preparation plants not located within the permit area of a mine, 30 CFR 785.21;
- (41) in situ processing activities, 30 CFR 785.22;
- (42) public participation in permit processing, 30 CFR 773.13. The phrase ``section 503(a)(6) or section 504(h) of the act, or" in 30 CFR 773.13(a)(3)(ii) shall be deleted;
- (43) review of permit applications, 30 CFR 773.15. Only in paragraph 30 CFR 773.15(b) shall the term ``act" mean ``surface mining control and reclamation act of 1977 (Pub. L. 95-87)" and amendments thereto. All other references to the term ``act" in 30 CFR 773.15 shall be replaced with ``state act";
- (44) permit issuance and right of renewal, 30 CFR 773.19. The phrase ``unless the requirements of 778.17 of this chapter are met" shall be deleted;
- (45) improvidently issued permits: general procedure, 30 CFR 773.20, except in subsection (c)(2) ``43 CFR 4.1370 through 4.1377, where osm is the regulatory authority, or under the state program equivalent, where a state is the regulatory authority" shall be replaced by ``K.A.R. 47-414a";
- (46) improvidently issued permits: rescission procedures, 30 CFR 773.21;
- (47) verification of ownership or control application information, 30 CFR 773.22;
- (48) review of ownership or control and violation information, 30 CFR 773.23;
- (49) procedures for challenging ownership or control links shown in avs, 30 CFR 773.24; except as otherwise indicated in this subsection:
 - (A) In subsection (b) ``federal violation" shall be replaced by ``state violation."
 - (B) In subsection (b) ``osm, addressed to the chief of the avs office, office

of surface mining reclamation and enforcement, U.S. department of the interior, Washington, D.C. 20240" shall be replaced by ``Kansas department of health and environment, addressed to the chief of the surface mining section, Kansas department of health and environment, 4033 Parkview Dr., Frontenac, Kansas, 66713."

(C) In subsection (b), (c), and (d) ``osm" shall be replaced by ``Kansas department of health and environment."

(D) In subsection (d)(2)(i) ``Rule 4 of the federal rules of civil procedure" shall be replaced by ``K.A.R. 47-414a."

(E) In subsection (d)(2)(ii) ``the department of the interior's office of hearings and appeals" shall be replaced by ``the secretary of the Kansas department of health and environment in accordance with K.S.A. 49-416a."

(50) standards for challenging ownership or control links and the status of violations, 30 CFR 773.25; except as otherwise indicated in this subsection:

(A) In subsection (a) ``Part 775" shall be replaced by ``K.A.R. 47-4-14a."

(B) Subsection b shall be replaced in its entirety by the following:

(b) The secretary of the Kansas department of health and environment or the secretary's designee shall have the authority to perform the following:

(1) make decisions with respect to ownership or control relationships contained within coal mining applications in the state of Kansas;

(2) make decisions with respect to the ownership or control relationships of a coal mining permit issued in the state of Kansas;

(3) make decisions with respect to the ownership or control relationship of a coal mining violation issued in the state of Kansas; and

(4) make decisions concerning the status of coal mining violations issued in the state of Kansas, i.e., whether the violation remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of t773.15(b)(1) of this part.

(C) In subsection (c) ``responsible agency" shall be replaced by ``Kansas department of health and environment."

(D) In subsection (d) ``a state regulatory authority or other state agency" shall be replaced by ``the Kansas department of health and environment."

(E) In subsection (d) ``by an administrative or judicial tribunal reviewing such determination" shall be replaced by ``of a judicial review of an agency action concerning the aforementioned Kansas department of health and environment determination";

(51) applicability, 30 CFR 701.11 subsection (e) only, subsections (a), (b), (c), (d) and (f) shall be deleted; and

(52) regulatory coordination with requirements under other laws, 30 CFR 773.12.

(b) The following terms shall be replaced with the indicated terms wherever they appear in the text of the federal regulations adopted by reference under K.A.R. 47-342:

(1) ``Subchapter K" or ``subchapter K of this chapter" shall be replaced by ``K.A.R. 47-9-1."

(2) ``This chapter," ``this subchapter," or ``subchapter G of this chapter"

shall be replaced by ``these regulations."

(3) ``Act" shall be replaced by ``state act."

(4) ``Section 515," ``section 515(b)," or ``section 515(b)(22)" shall be replaced by ``K.S.A. 49-405a, 49-408 to 49-413, inclusive, and 49-429."

(5) ``Subchapter J of this chapter" or ``part 800 of this chapter" shall be replaced by ``article 8 of chapter 47 of the Kansas administrative regulations."

(6) ``Section 502" and ``section 508" shall be replaced by ``K.S.A. 49-406."

(7) ``Section 515(b)(16)" or ``section 516" shall be replaced by ``K.S.A. 49-429."

(8) ``Subchapter R of this chapter" shall be replaced by ``the office."

(9) ``Subchapter B of this chapter" shall be replaced by ``K.A.R. 47-9-4."

(10) ``Part 775 of this chapter" shall be replaced by ``K.S.A. 49-407(d), 49-416a, 49-422a, and article 4 of chapter 47 of the Kansas administrative regulations."

(11) ``Parts 762, 764, and 769 of this chapter" and ``parts 764 and 769 of this chapter" shall be replaced by ``K.A.R. 47-12-4."

(12) ``Part 816" or ``part 816 of this chapter" shall be replaced by ``K.A.R. 47-9-1(c)."

(13) ``Section 775.13" shall be replaced by ``K.S.A. 49422a."

(14) ``Section 775.11" shall be replaced by ``K.S.A. 49407(d), 49-416a, and article 4 of chapter 47 of the Kansas administrative regulations and K.A.R. 47-5-5a(c)."

(15) ``Part 785 of this chapter" shall be replaced by ``K.A.R. 47-3-42(a)(36) to (41), inclusive." (Authorized by K.S.A. 49-405 and 49-427; implementing K.S.A. 49-405, 49406, 49-407, and 49-427; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997.)

State of Kansas

Article 4.--PUBLIC HEARINGS

47-4-14a Administrative hearing procedure. (a) The following shall be the regulations that govern the procedure used in all administrative hearings resulting from the following:

(1) petitions for review of proposed civil penalty assessments issued by the secretary;

(2) applications for review of notices of violation and orders of cessation or modification, vacation or termination of notices of violation and orders of cessation;

(3) applications for review of the secretary's decision to disapprove, suspend, or revoke a permit;

(4) applications for temporary relief;

- (5) applications for review of alleged discriminatory acts;
- (6) petitions for award of costs and expenses;
- (7) appeals from initial orders or decisions of presiding officers; and
- (8) all other appeals and review procedures authorized by the act.

(b) Definitions. As used in these regulations, the following definitions shall apply.

(1) "Party" means the person to whom an order, notice of violation, civil penalty assessment, suspension of permit, revocation of permit, or petition for award of costs and expenses, is specifically directed; or

(2) a person named or allowed to intervene as a party to a state agency proceeding or allowed to intervene as a party in a proceeding.

(c) Rules of procedure.

(1) Hearings shall be held in the location designated by the presiding officer, giving due consideration to the convenience of the parties, their representatives and witnesses, except as otherwise provided by the state act.

(2) All documents that are to be filed in a proceeding governed by this section shall be filed with the administrative appeals section of the Kansas department of health and environment, suite 400D, 109 SW 9th, Topeka, Kansas 66612-1215.

(3) A person who has initiated a proceeding under this regulation shall file a proof of service in the form of a registered receipt if by certified or registered mail, or acknowledgement by the party served or verified return when service is made personally. A certificate of service shall be contained in all other documents filed by a party.

(4) The effective filing date of a notice of appeal or petition for review shall be the date of receipt by the administrative appeals section if filed personally, or the postmark date if filed by mail. The burden of establishing the date of mailing shall be on the person filing the document.

(5) All documents shall be captioned with the following information:

- (A) the name of the party;
- (B) name of the facility, mine, or site to which the document pertains; and
- (C) if appropriate, the following information:

- (i) the number of the notice, order, or other agency decision or action to which the appeal pertains;
- (ii) the case number assigned to the original agency action; and
- (iii) any other identifying information, including permit number.

(6) Service.

(A) Copies of documents that initiate a proceeding shall be served upon all parties by registered or certified mail, return receipt requested.

(B) Copies of all subsequent documents shall be served personally or by first-class mail.

(C) Service of all documents shall be complete at the time of personal service, or, if by mail, upon receipt.

(D) When an attorney has entered an appearance on behalf of a party, thereafter service shall be made upon the attorney.

(7) Intervention. Any person may petition for leave to intervene in a proceeding. Each petition shall set out the interest of the petitioner and why the petitioner's interest is or may be affected.

(A) The presiding officer shall grant intervention if the petitioner fulfills these requirements:

(i) had a statutory right to initiate the proceeding into which the petitioner seeks intervention; or

(ii) has an interest that is or may be adversely affected by the outcome of the proceeding.

(B) If subsections (7) (A) (i) or (7) (A) (ii) of this regulation are not applicable, the presiding officer shall consider the following to determine if intervention is appropriate:

(i) the nature of the issues;

(ii) the adequacy of the representation of petitioner's interest provided by the existing parties;

(iii) the ability of the petitioner to present relevant evidence and argument; and

(iv) the effect of intervention on the agency's implementation of its statutory duties.

(C) Each person granted leave to intervene shall participate as a party.

(D) The presiding officer shall determine the extent and terms of limited participation by an intervenor.

(8) Voluntary dismissal. Any party who initiated a proceeding may withdraw it by moving to dismiss. The presiding officer may grant such a motion.

(9) Pleadings, motions, briefs; service. At appropriate stages of the proceeding, each party shall be given full opportunity to file pleadings, motions, and objections.

(A) Each pleading and motion shall be in writing and state concisely the supporting grounds.

(B) Each party shall have 15 days from the date of service of the pleading in which to file a response, unless otherwise ordered by the presiding officer.

(C) Failure to make a timely motion or response shall be construed as a waiver of objection.

(D) Each motion shall be ruled upon expeditiously.

(E) At appropriate stages, each party shall be given full opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed initial and final orders.

(F) Each document filed pursuant to this subsection shall be served on all parties by mail or any other means prescribed in this regulation.

(10) Consolidation. When pending proceedings involve a common question of fact or law, they shall be consolidated pursuant to a motion by a party or the presiding officer.

(11) Waiver of hearing. Any person entitled to a hearing may waive such right in writing. Any person required to file a responsive pleading who fails to do so by the required time may be deemed to have waived the person's right to a

hearing. Unless all parties who are entitled to a hearing waive such rights or are deemed to have waived such rights, a hearing shall be held.

(d) Formal hearings. When a statute provides for a hearing in accordance with these regulations, the hearing shall be governed by this subsection.

(1) Participation and representation.

(A) Each party shall participate in the hearing in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(B) Whether or not participating in person, each party may be represented at the party's own expense by counsel or, if permitted by law, other representative.

(C) Each corporation or other artificial person shall participate by counsel.

(2) Presiding officer.

(A) The secretary or one or more other persons designated by the secretary shall be the presiding officer.

(B) Each person serving or designated to serve alone or with others as presiding officer shall be subject to disqualification for administrative bias, prejudice, or interest.

(C) Any party may petition for the disqualification of a presiding officer promptly after receipt of notice indicating that the person will preside or promptly upon discovering facts establishing grounds for disqualification, whichever is later.

(D) A presiding officer whose disqualification is requested shall determine whether or not to grant the petition, stating facts and reasons for the determination. In the event that the presiding officer fails to grant a petition for disqualification, the petitioning party may file an affidavit of personal bias or disqualification with substantiating facts, and the matter of disqualification shall be determined by the secretary.

(E) If a substitute is required for a presiding officer who is disqualified or becomes unavailable for any reason, each action taken by a duly appointed substitute for a disqualified or unavailable presiding officer shall be as effective as if taken by the disqualified or unavailable presiding officer.

(F) Agreements may be entered into by the department with another state agency to provide hearing officers the opportunity to conduct proceedings under these regulations.

(3) Prehearing conference; notice. The presiding officer designated to conduct the hearing may conduct a prehearing conference. If the conference is conducted, these shall apply:

(A) A presiding officer shall be assigned by the department for the prehearing conference, exercising the same discretion as is provided by subsection (d)(2) concerning the selection of a presiding officer for a hearing.

(B) The presiding officer for the prehearing conference shall set the time and place of the conference and give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(4) The prehearing conference notice shall include the following:

(A) the names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(B) the name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the state agency;

(C) the official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(D) a statement of the time, place, and nature of the prehearing conference;

(E) a statement of the legal authority and jurisdiction under which the prehearing conference and hearing are to be held;

(F) the name, official title, mailing address, and telephone number of the presiding officer for the prehearing conference;

(G) a statement that any party who fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding shall be held in default; and

(H) a notice that may include any other matters that the presiding officer considers desirable to expedite the proceedings.

(5) Prehearing conference procedure; prehearing order.

(A) The presiding officer may conduct all or part of the prehearing conference by telephone or other electronic means if each participant in the conference has an opportunity to participate in the entire proceeding while it is taking place.

(B) The presiding officer shall conduct the prehearing conference, as shall be appropriate, to deal with such matters as the following:

(i) exploration of settlement possibilities;

(ii) preparation of stipulations;

(iii) clarification of issues;

(iv) rulings on identity and limitation of the number of witnesses;

(v) objections to proffers of evidence;

(vi) determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person;

(vii) order of presentation of evidence and cross-examination;

(viii) rulings regarding issuance of subpoenas;

(ix) discovery orders and protective orders; and

(x) such other matters as will promote the orderly and prompt conduct of the hearing.

(C) The presiding officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(D) If a prehearing conference is not held, the presiding officer for the hearing shall issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

(6) Notice of administrative hearing.

(A) The time and place of the hearing shall be set by the presiding officer. Reasonable written notice at least 10 days before the hearing shall be given to

all parties and to all persons who have filed written petitions to intervene in the matter. Service of notices shall be made in accordance with subsection (d) (18) of this regulation, as amended.

(B) The notice shall include a copy of any prehearing order rendered in the matter.

(C) To the extent not included in the prehearing order accompanying it, the notice shall include the following:

(i) the names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(ii) the name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the state agency;

(iii) the official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(iv) the time, place, and nature of the hearing;

(v) the legal authority and jurisdiction under which the hearing is to be held;

(vi) the name, official title, mailing address, and telephone number of the presiding officer;

(vii) the issues involved and, to the extent known to the presiding officer, the matters asserted by the parties; and

(viii) a statement that any party who fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding shall be held in default.

(D) The notice may include any other matters that the presiding officer considers desirable to expedite the proceedings.

(E) The presiding officer shall cause notice to be given to any other person entitled to notice under any other provisions of law, who has not been given notice under subsection (d) (6) (A) of this regulation, as follows.

(i) Notice under this subsection shall be given in the manner specified by such provision of law or, if no such manner is specified, in a manner determined by the agency.

(ii) If any person other than the agency is directed to give notice under this subsection, the agency shall require that the person furnish proof of service.

(iii) Notice under this subsection may include all types of information provided in subsections (d) (6) (A) through (D) of this regulation or may consist of a brief statement indicating the subject matter, parties, time, place where the hearing will be held, locations where the general public may meet for hearings that are conducted electronically, nature of the hearing, manner in which copies of the notice to the parties may be inspected and copied, and the name and telephone number of the presiding officer.

(iv) Notice of the hearing shall be posted by the department at the surface mining section office and, where practicable, shall be published in a newspaper of general circulation in the area of the mine at least seven days prior to the hearing.

(7) Default.

(A) If a party fails to attend or participate in a prehearing conference, hearing, or other adjudicative proceeding, the presiding officer may serve all parties with written notice of the proposed default order, including the grounds for default.

(B) Within seven days after service of a proposed default order, the party against whom it was issued may file a written motion requesting that the proposed default order be vacated, stating the grounds relied upon. During this period, the presiding officer may adjourn the proceedings or conduct them without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

(C) The proposed default order shall become effective seven days after service, unless vacated by the presiding officer.

(D) Once a default order becomes effective, the presiding officer may conduct any proceedings necessary to complete the adjudication and determine all issues in the adjudication, including those affecting the defaulting party without the defaulting party's participation. In lieu of determining the issues affecting the defaulting party, the presiding officer may dismiss such party's application for an adjudicative proceeding, unless otherwise prohibited by law.

(8) Certification of interlocutory ruling. On the presiding officer's or a party's motion, a ruling may be certified to the secretary if that ruling presents a controlling question of law and if immediate appeal would materially advance the ultimate disposition of the case.

(9) Summary judgment. Each party may move for summary decision, in whole or in part, after a proceeding has begun.

(A) The moving party shall verify each allegation of fact with a supporting affidavit or affidavits, unless reliance is upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify each allegation.

(B) The presiding officer shall grant such a motion for summary judgment if the record, including pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows the following:

- (i) there is no disputed issue as to any material fact; and
- (ii) the moving party is entitled to a summary decision as a matter of law.

(C) If complete summary decision is not granted and an evidentiary hearing is necessary, the presiding officer shall, if practicable, perform the following:

- (i) examine all relevant evidence and documents in the record;
- (ii) ascertain what material facts are controverted in good faith;
- (iii) issue an order specifying those facts that are not substantially controverted; and
- (iv) direct any further proceedings that the presiding officer determines are necessary.

(10) The presiding officer shall perform these duties:

- (A) shall regulate the proceedings;
- (B) shall afford to each party the opportunity to respond, present evidence

and argument, conduct cross-examination, and submit rebuttal evidence, to the extent necessary for full disclosure of all relevant facts and issues, except as restricted by a limited grant of intervention or by the prehearing order;

(C) may, and when required by statute shall, give nonparties an opportunity to present oral or written statements. When the presiding officer proposes to consider a statement by a nonparty, the following apply:

(i) each party shall have an opportunity to challenge or rebut the statement; and

(ii) any party may, by motion, require the statement to be given under oath or confirmation;

(D) may conduct all or part of the hearing by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding;

(E) shall cause the hearing to be recorded at the state agency's expense. The state agency shall not be required, at its expense, to prepare a transcript, unless required to do so by any other provision of law. Each party, at the party's expense and subject to such reasonable conditions as the state agency may establish, may cause a person other than the state agency to prepare a transcript from the state agency's record, or cause additional recordings to be made during the hearing; and

(F) may close parts of the hearing from public observation only when a provision of the law expressly authorizes closure.

(11) Proposed findings of fact and conclusions of law. The presiding officer shall allow the parties to submit proposed findings of fact and conclusions of law with a supporting brief therefor at a time set forth by the presiding officer.

(12) Evidence; official notice.

(A) A presiding officer shall not be bound by the statutory rules of evidence, but shall give the parties reasonable opportunity to be heard and to present evidence, and the presiding officer shall act reasonably without partiality. The presiding officer shall give effect to the rules of privilege recognized by law. Evidence may not be excluded solely because it is hearsay.

(B) All testimony of parties and witnesses shall be made under oath or affirmation, and the presiding officer shall have the power to administer an oath or affirmation for that purpose.

(C) Statements presented by nonparties in accordance with subsection (d)(10)(C) of this regulation shall be received as evidence.

(D) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party.

(E) Documentary evidence shall be received in the form of a copy or excerpt. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(F) Official notice shall be taken of the following:

(i) any matter that could be judicially noticed in the courts of this state;

(ii) the record of other proceedings before the state agency;
(iii) technical or scientific matters within the state agency's specialized knowledge; and

(iv) codes of standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Each party shall be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on matters or material noticed, of the specific matters or material noticed and the source, including any staff memoranda and data. Each party shall be afforded an opportunity to contest and rebut the matters or material so noticed.

(13) Orders, initial and final.

(A) If the presiding officer is the agency head, the presiding officer shall render a final order.

(B) If the presiding officer is not the agency head, the presiding officer shall render an initial order, which shall become a final order unless reviewed in accordance with subsection (d)(14) of this regulation.

(C) A final order or initial order shall include, separately stated, findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration, administrative review, or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(D) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.

(E) If a substitute presiding officer is appointed, the substitute presiding officer may use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(F) The presiding officer shall allow the parties to a proceeding to have an opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the presiding officer.

(G) A final order or initial order pursuant to this section shall be rendered in writing and served within 30 days after conclusion of the hearing or after submission of proposed findings in accordance with paragraph (d)(13)(F) of this regulation, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(H) The presiding officer shall cause copies of the order to be served on each party and, if the order is an initial order, the agency head in the manner

prescribed by subsection (d)(18) of this regulation.

(14) Review of initial order; exceptions to reviewability.

(A) The secretary or secretary's designee, upon the secretary or secretary's designee's own motion may, and upon petition by any party or when required by law shall, review an initial order, except to the extent that these conditions apply:

(i) a provision of law precludes or limits review of the initial order; or

(ii) the secretary or secretary's designee determines to review some but not all issues, or not to exercise any review, or delegates its authority to review the initial order to one or more persons, unless such delegation is expressly prohibited by law, or authorizes one or more persons to review the initial order, subject to further review by the secretary or secretary's designee.

(B) A petition for review of an initial order shall be filed with the secretary or secretary's designee, or with any person designated for this purpose by regulation of the department, within 15 days after service of the initial order. If the secretary or secretary's designee on the secretary or secretary's designee's own motion decides to review an initial order, the secretary or secretary's designee shall give written notice of the secretary or secretary's designee's intention to review the initial order within 15 days after the initial order is issued. If the secretary or secretary's designee determines not to review an initial order in response to a petition for review, the secretary or secretary's designee shall, within 20 days after filing of the petition for review, serve on each party an order stating that review will not be exercised.

(C) The petition for review shall state its basis. If the secretary or secretary's designee on the secretary or secretary's designee's own motion gives notice of its intent to review an initial order, the secretary or secretary's designee shall identify the issues that it intends to review.

(D) In reviewing an initial order, the secretary or secretary's designee shall exercise all the decision-making power that the secretary or secretary's designee would have had to render a final order had the secretary presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the secretary or secretary's designee upon notice to all parties.

(E) The secretary or secretary's designee shall afford each party an opportunity to present briefs and shall afford each party an opportunity to present oral argument.

(F) The secretary or secretary's designee shall render a final order disposing of the proceeding or remand the matter for further proceedings with instructions to the presiding officer who rendered the initial order. Upon remanding a matter, the secretary or secretary's designee shall order any temporary relief that is authorized and appropriate.

(G) A final order or an order remanding the matter for further proceedings shall be rendered in writing and served within 30 days after receipt of briefs and oral argument, unless that period is waived or extended with written

consent of all parties or for good cause shown.

(H) A final order or an order remanding the matter for further proceedings under this section shall identify any difference between this order and the initial order and shall include, or incorporate by express reference to the initial order, all the matters required by paragraph (d)(13)(C) of this regulation.

(I) The secretary or secretary's designee shall cause copies of the final order or order remanding the matter for further proceedings to be served on each party in the manner prescribed by subsection (d)(18) of this regulation.

(15) Stay. A party may submit to the presiding officer or secretary or secretary's designee a petition for stay of effectiveness of an initial or final order until the time at which a petition for judicial review would no longer be timely, unless otherwise provided by statute or stated in the initial or final order. The presiding officer or secretary or secretary's designee may take action on the petition for stay, either before or after the effective date of the initial or final order.

(16) Reconsideration.

(A) Each party, within 15 days after service of a final order, may file a petition for reconsideration with the secretary or secretary's designee, stating the specific grounds upon which relief is requested. The filing of the petition shall not be a prerequisite for seeking administrative or judicial review.

(B) The secretary shall render a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further proceedings. The petition may be granted, in whole or in part, only if the secretary states, in the written order, findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the department's discretion, to justify the order. The petition shall be deemed to have been denied if the secretary does not dispose of it within 20 days after the filing of the petition.

(C) An order under this section shall be served on the parties in the manner prescribed by subsection (d)(18) of this regulation.

(17) Orders, when effective.

(A) Unless a later date is stated in a final order or a stay is granted, a final order shall be effective upon service.

(B) Unless a later date in an initial order or a stay is granted, an initial order shall become effective and shall become the final order under these circumstances:

(i) when the initial order is served, if administrative review is unavailable;

(ii) when the secretary serves an order stating, after a petition for review has been filed, that review will not be exercised; or

(iii) when, 30 days after service if no party has filed a petition for review by the secretary and the secretary has not given written notice of its intent to exercise review, and review by the secretary is not otherwise required by

law.

(18) Service of order. Service of an order or notice shall be made upon the party and the party's attorney of record, if any, by delivering a copy of the order or notice to the person to be served or by mailing a copy of the order or notice to the person at the person's last known address. Delivery of a copy of an order or notice means handing the order or notice to the person or leaving the order or notice at the person's principal place of business or residence and with a person of suitable age and discretion who works or resides therein. Service shall be presumed if the presiding officer, or a person directed to make service by the presiding officer, makes a written certificate of service. Service by mail shall be complete upon mailing. Whenever a party has the right or is required to do some act or file a petition within a prescribed period after service of a notice or order and the notice or order is served by mail, three days shall be added to the prescribed period.

(19) Record.

(A) The department shall maintain an official record of each formal hearing.

(B) The record shall consist only of these items:

- (i) notices of all proceedings;
- (ii) any prehearing order;
- (iii) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;
- (iv) evidence received or considered;
- (v) a statement of matters officially noticed;
- (vi) proffers of proof and objections and rulings on the proffers;
- (vii) proposed findings, requested orders, and exceptions;
- (viii) the record prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered before final disposition of the proceeding;
- (ix) any final order, initial order, or order on reconsideration; and
- (x) staff memoranda or data submitted to the presiding officer.

(C) Except to the extent that these regulations or another statute provides otherwise, the department's record, excluding matters under subsection

(d)(19)(B)(x) of this regulation, shall constitute the exclusive basis for the department's action in formal hearings and for judicial review of the department's action. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-407, and 49-416a; effective Feb. 11, 1991; amended May 2, 1997.)

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47-4-15 Administrative hearings; discovery. Discovery shall be permitted to the extent allowed by the presiding officer or as agreed to by the parties. (a) Requests for discovery shall be made in writing to the presiding officer, and a copy of each request for discovery shall be served on the party or person against whom discovery is sought. The presiding officer may specify the times during which the parties may pursue discovery and respond to discovery

requests. The presiding officer may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure.

(b) Subpoenas issued by the presiding officer shall be served by a person designated by the presiding officer or any other person who is not a party and is not less than 18 years of age. Service shall be in person and at the expense of the requesting party. Proof of service shall be shown by affidavit.

(c) Subpoenas and orders issued by the presiding officer shall be enforced pursuant to the provisions of the act for judicial review and civil enforcement of agency actions pursuant to K.S.A. 77-601 et seq., as amended.

(d) Discovery methods. Parties may obtain discovery by one or more of the following methods:

- (1) depositions upon oral examination or upon written interrogatories;
- (2) written interrogatories;
- (3) production of documents or items, or permission to enter upon land or other property for inspection and other purposes; and
- (4) requests for admission.

(e) Time for discovery. Following the initiation of a proceeding, the parties may initiate discovery at any time so long as it does not interfere with the conduct of the hearing.

(f) Scope of discovery.

(1) Unless otherwise limited by order of the presiding officer in accordance with these regulations, the parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible items, and the identity and location of persons having knowledge of any discoverable matter.

(2) It shall not be grounds for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(3) A party may obtain discovery of documents and tangible items otherwise discoverable under subsection (f)(1) of this regulation and prepared in anticipation of or for the hearing by or for another party's representative, including a party's attorney, consultant, surety, indemnitor, insurer, or agent. This discovery shall occur only upon a showing that the party seeking discovery has substantial need of the materials for the preparation of a party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

(g) Protective order. Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of

the following:

- (1) the discovery not be had;
- (2) the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) the discovery may be had only by a method of discovery other than the method selected by the party seeking discovery;
- (4) certain matters not relevant may not be inquired into, or the scope of discovery be limited to certain matters;
- (5) discovery be conducted with no one present except persons designated by the presiding officer; or
- (6) a trade secret or other confidential research, development, or commercial information may not be disclosed or may be disclosed only in a designated way.

(h) Sequence and timing of discovery. Unless the presiding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence. The fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(i) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the party's response to include information thereafter acquired, except as follows.

(1) A party shall be under a duty to timely supplement the party's response with respect to any question directly addressed to the following:

(A) the identity and location of persons having knowledge of discoverable matters; or

(B) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert witness is expected to testify, and the substance of the expert's testimony.

(2) A party shall timely amend a prior response if the party later obtains information upon the basis of which either condition applies:

(A) the party knows the response was incorrect when made; or

(B) the party knows that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the presiding officer or agreement of the parties.

(j) Motion to compel discovery.

(1) If a deponent fails to answer a question propounded, or if a party upon whom a request is made pursuant to subsection (d)(3) of this regulation or a party upon whom answers to interrogatories are served fails to adequately respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the discovering party may move the presiding officer for an order compelling a response or inspection in accordance with the request.

(2) The motion shall set forth the following:

(A) the nature of the questions or request;
(B) the response or objection of the party upon whom the request was served;
and

(C) arguments in support of the motion.

(3) For purposes of this section, an evasive answer or an incomplete answer or response shall be treated as a failure to answer or respond.

(4) In ruling on a motion made pursuant to this section, the presiding officer may make such protective orders as the presiding officer is authorized to make on a motion made pursuant to K.A.R. 47-4-15(g).

(k) Failure to comply with orders compelling discovery. If a party or an officer, director, or other agent of a party fails to obey an order to provide or permit discovery, the presiding officer before whom the action is pending may make such orders in regard to the failure as are just, including the following:

(1) an order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters into evidence; or

(3) an order striking out pleadings or parts of pleadings, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part of the action or proceeding, or rendering a judgment by default against the disobedient party.

(l) Depositions upon oral examination or upon written questions.

(1) Any party desiring to take the testimony of any other party or other person by deposition upon oral examination or written questions shall, without leave of the presiding officer, give reasonable notice in writing to every other party, to the person to be examined and to the presiding officer, of the following:

(A) the proposed time and place of taking the deposition;

(B) the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify the person or the particular group or class to which the person belongs;

(C) the matter upon which each person will be examined; and

(D) the name or descriptive title and address of the officer before whom the deposition is to be taken.

(2) A deposition may be taken before any officer authorized to administer oaths by the laws of the United States or by those of the place where the examination is held.

(3) The actual taking of the deposition shall proceed as follows.

(A) The deposition shall be on the record.

(B) The officer before whom the deposition is to be taken shall put the witness under oath or affirmation.

(C) Examination and cross-examination shall proceed as at a hearing.

(D) Each objection made at the time of the examination shall be noted by the officer.

(E) The officer shall not rule on objections to the evidence, but evidence objected to shall be taken subject to the objections.

(4) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature, unless examination and signature are waived by the deponent. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign.

(5) When the deposition is to be taken on written questions, the party taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer the questions, and the name, description, title, and address of the officer before whom the questions are to be taken. Within 30 days after service, any other party may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, as in the case of a deposition on oral examination.

(6) A deposition shall not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts.

(7) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party at whose request the deposition is taken.

(8) The deponent may be accompanied, represented, and advised by legal counsel.

(m) Use of depositions. At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition, or who had reasonable notice of the deposition, in accordance with any of the following provisions.

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent or a person designated to testify on behalf of a public or private corporation, partnership, or association or governmental agency that is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose if the presiding officer finds that any of these conditions occur:

(A) the witness is dead;

(B) the witness is at a distance greater than 100 miles from the place of hearing, or is outside the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;

(C) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be used.

(n) Written interrogatories to parties.

(1) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish the requested information that is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be served on the presiding officer and upon all parties to the proceeding.

(2) Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answer and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within 30 days after service of the interrogatories, or within a shorter or longer period that the presiding officer may allow.

(3) Interrogatories may relate to any matters that can be inquired into under subsection (f) of this regulation. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact. However, the presiding officer may order that such an interrogatory need not be answered until after the completion of designated discovery or until a prehearing conference or other later time.

(o) Production of documents and items, and entry upon land for inspection and other purposes.

(1) Any party may serve on any other party a request to perform the following:

(A) produce and permit the party making the request, or a person acting on the party's behalf, to inspect and copy any designated document, or to inspect and copy, test, or sample any tangible items within the scope of subsection (f) above of this regulation, that are in the possession, custody, or control of the party upon whom the request is served; or

(B) permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property, including the air, water, and soil, or any designated object or operation on the land, within the scope of subsection (f) of this regulation.

(2) The request may be served on any party without leave of the presiding officer.

(3) The request shall fulfill these requirements:

(A) set forth the items to be inspected either by individual item or by category;

(B) describe each item or category with reasonable particularity; and

(C) specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(4) The party upon whom the request is served shall serve a written response on the party submitting the request within 30 days after service of the request.

(5) The response shall state the following, with respect to each item or category:

(A) that inspection and related activities will be permitted as requested; or

(B) that objection is made in whole or in part, in which case the reasons for objection shall be stated.

(p) Request for admissions.

(1) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(2) Each matter of which an admission is requested shall be admitted unless, within 30 days after service of the request or shorter or longer time that the presiding officer may allow, the party to whom the request is directed serves on the requesting party the following:

(A) a sworn statement denying specifically the relevant matters of which an admission is requested;

(B) a sworn statement setting forth in detail the reasons why the party can neither truthfully admit nor deny the matters; or

(C) written objections on the grounds that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(3) An answering party shall not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny.

(4) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the presiding officer determines that an objection is justified, the presiding officer shall order that an answer be served. If the presiding officer determines that an answer does not comply with the requirements of this section, the presiding officer may order either that the matter is admitted or that an amended answer be served. The presiding officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time before hearing.

(5) Any matter admitted under this section shall be conclusively established unless the presiding officer on motion permits withdrawal or amendment of the admission.

(6) Any admission made by a party under this section shall be for the purpose of the pending action only and shall not be an admission by the party for any other purpose. The admission shall not be used against the party in any other proceeding. (Authorized by K.S.A. 49-405; and implementing K.S.A. 49-405, 49-407, and 49-416a; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

47-4-16 Interim orders for temporary relief. (a) An interim order for temporary relief may be issued by the department or a presiding officer, on its own initiative or on written request, when there has been a showing of good cause. An interim order shall not be granted in permit application cases in which the relief sought is issuance of a permit that has been denied in whole or in part by the department.

(b) Unless otherwise specified by statute, an interim order for temporary relief shall be effective for 30 days at most if a hearing is not held on the merits of the issues. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-407, and 49-416a; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

47-4-17 Administrative hearings; award of costs and expenses. (a) Any person may file a petition for award of costs and expenses, including attorney fees, reasonably incurred as a result of that person's participation in any administrative proceeding under the state act which results in a final order being issued by the department or its presiding officer. The petition shall be filed within 45 days of receipt of the order. Failure to make a timely filing of the petition may constitute a waiver of the right to an award.

(b) A petition filed under this section shall include the name of the person from whom costs and expenses are sought, and the following shall be submitted in support of the petition:

(1) an affidavit detailing all costs and expenses, including attorney fees, incurred as a result of participation in the proceeding;

(2) receipts or other evidence of the costs and expenses; and

(3) where attorney fees are claimed, the hours expended on the case, the customary commercial rate of payment for services in the locality, and evidence of the experience, reputation, and ability of the attorney or attorneys.

(c) Any person served with the petition shall have 30 days after the date of service to file an answer.

(d) Appropriate costs and expenses, including attorney fees, may be awarded as follows:

(1) from the permittee, if the person initiates any administrative proceedings, or participates in the proceedings, upon a finding that a violation of the state act, of these regulations, or of the permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding in which such a finding is made if the department or its presiding

officer determines that the person made a substantial contribution to the full and fair determination of the issues;

(2) from the department to anyone other than the permittee or permittee's representative, if the person initiates or participates in any proceeding under the act upon a finding that the person made a substantial contribution to a full and fair determination of the issues;

(3) from the department to the permittee when the permittee demonstrates that the department issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee;

(4) to a permittee from any person when the permittee demonstrates that the person initiated a proceeding or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee; or

(5) to the department when it demonstrates that any person applied for review or participated in an administrative proceeding in bad faith and for the purpose of harassing or embarrassing the department or any person employed by the department.

(e) An award may include all costs and expenses, including attorney fees and expert witness fees, reasonably incurred as a result of initiation of or participation in a proceeding under the state act. (Authorized by K.S.A. 49405; implementing K.S.A. 49-405, 49-407 and 49-416a; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

Article 5.--CIVIL PENALTIES

47-5-5a Civil penalties; adoption by reference. (a) Subject to the provisions of subsection (c), the following regulations as in effect on July 1, 1995 are adopted by reference except as otherwise indicated:

(1) how assessments are made, 30 CFR 845.11;

(2) when penalty will be assessed, 30 CFR 845.12;

(3) point system for penalties, 30 CFR 845.13;

(4) determination of amount of penalty, 30 CFR 845.14;

(5) assessment of separate violations for each day, 30 CFR 845.15;

(6) waiver of use of formula to determine civil penalty, 30 CFR 845.16;

(7) procedures for assessment of civil penalties, 30 CFR 845.17;

(8) procedures for assessment conference, 30 CFR 845.18;

(9) request for a hearing, 30 CFR 845.19; and

(10) individual civil penalties, 30 CFR part 846, deleting the phrase ``a Federal lands program," and changing the phrase ``Federal enforcement of a state program pursuant to section 521 of the act" to ``enforcement of a state program pursuant to K.S.A. 49-405 of the state act" in 30 CFR 846.5. 30 CFR 870.15(e)(1)-(5); (f), deleting ``This penalty is in addition to the interest described in paragraph (c) of this section"; and (g) shall be adopted by reference as they relate to 30 CFR 846.18(d).

(b) The following terms shall be replaced with the indicated terms wherever

they appear in the text of the federal regulations adopted by reference under K.A.R. 47-55a(a):

- (1) "Act" shall be replaced by "state act";
- (2) "Director" or "director or his designee" shall be replaced by "secretary of health and environment or secretary's designee";
- (3) "Secretary" shall be replaced by "secretary of health and environment";
- (4) "Section 521(a)" shall be replaced by "K.S.A. 49405(m)(2)";
- (5) "Section 525(c)" shall be replaced by "K.S.A. 49416a(c)";
- (6) "Section 526" and "section 526(c)" shall be replaced by "K.S.A. 49-422a";
- (7) "Section 518(e), 518(f), 521(a)(4), or 521(c)" shall be replaced by "K.S.A. 49-405c(e), 49-405c(f), 49-405(m)(3), or 49-405(m)(4), respectively";
- (8) "Office" or "office of hearings and appeals" shall be replaced by "department";
- (9) "Section 518, 521(a)(4), and 525" shall be replaced by "K.S.A. 49-405c, 49-405(m)(3), and 49-416a";
- (10) "30 CFR 845.20" shall be replaced by "K.A.R. 475-16";
- (11) "43 CFR 4,1300 et seq." and "rule 4 of the federal rules of civil procedure" shall be replaced by "K.A.R. 474-14a";
- (12) "standard" shall be replaced with "state regulation or standard";
- (13) "30 CFR 843.16" shall be replaced by "K.A.R. 474-14a";
- (14) "Section 521" shall be replaced by "K.S.A. 49405";
- (15) "Section 502" shall be replaced by "K.S.A. 49406";
- (16) "Section 703" shall be replaced by "K.S.A. 1995 Supp. 75-2973";
- (17) "Hearing's Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Phone: 703-235-3800)" shall be replaced by "Administrative appeals coordinator, administrative appeals section, office of the secretary, Kansas department of health and environment, mills building, suite 400D, 109 sw 9th street, Topeka, Kansas 66612-1215";
- (18) "Section 518(b)" shall be replaced by "K.S.A. 49405c(b)";
- (19) "Federal" shall be replaced by "state"; and
- (20) The following terms shall be replaced in 30 CFR 870.15(g).
 - (A) "OSM" shall be replaced by "the surface mining section."
 - (B) "Solicitor, Department of Interior" shall be replaced by "office of legal services, Kansas department of health and environment."
- (c) Review of proposed assessments of civil penalties. In the event a request for hearing is made pursuant to subsection (a)(9) of these regulations, the procedures set forth in K.A.R. 47-4-14a and the following shall apply.
 - (1) Time for filing petition.
 - (A) A petition for review of a proposed assessment of a civil penalty shall be filed within 30 days of receipt of the proposed assessment; or
 - (B) if a timely request for a conference has been made pursuant to subsection (a)(8) of this regulation, a petition for review shall be filed within 15 days

after service of notice by the presiding officer that the conference is completed.

(C) No extension of time shall be granted for filing a petition for review of a proposed assessment of a civil penalty as required by paragraph (c)(1)(A) or (B). If a petition for review is not filed within the time period provided in paragraph (c)(1)(A) or (B), the appropriateness of the amount of the penalty, and the fact of the violation if there is no proceeding pending under K.S.A. 49-416a(a) to review the notice of violation or cessation order involved, shall be admitted, the petition shall be dismissed, and the civil penalty assessed shall become a final order of the secretary.

(2) Contents of petition; payment required.

(A) The petition shall include the following:

(i) a short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;

(ii) if the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula contained in K.A.R. 47-5-5a(a), adopting by reference 30 CFR Part 845 and 846, was misapplied, along with a proposed civil penalty utilizing the civil penalty formula;

(iii) identification by number of each violation being contested;

(iv) the identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the petition; and

(v) a request for a hearing.

(B) The petition shall be accompanied by these items:

(i) full payment of the proposed assessment in the form of a cashier's check, certified check, bank draft, personal check or bank money order made payable to the Kansas department of health and environment, to be placed in an escrow account pending final determination of the assessment; and

(ii) on the face of the payment an identification by number of the violations for which payment is being tendered.

(C) As required by K.S.A. 49-405c(c), failure to make timely payment of the proposed assessment in full shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(D) No extension of time shall be granted for full payment of the proposed assessment. If payment is not made within the time period provided in paragraph (c)(1) (A) or (B), the appropriateness of the amount of the penalty, the fact of the violation, and if there is no review proceeding, the notice of violation or cessation order involved shall be deemed admitted; the petition shall be dismissed; and the civil penalty assessed shall become a final order of the secretary.

(3) Answer. The department shall have 30 days from receipt of a copy of the petition within which to file an answer.

(4) Review of waiver determination.

(A) Within 10 days of the filing of a petition, the petitioner may move the presiding officer to review the granting or denial of a waiver of the civil

penalty formula pursuant to paragraph (a)(6) of this regulation.

(B) The motion shall contain a statement indicating all alleged facts relevant to the granting or denial of a waiver.

(C) Review shall be limited to the written determination of the section granting or denying the waiver, the motion, and responses to the motion. The standard of review shall be abuse of discretion.

(D) If the presiding officer finds that the section abused its discretion in granting or denying the waiver, the presiding officer shall hold a hearing on the petition for review of the proposed assessment and make a determination pursuant to paragraph (c)(7) of this regulation.

(5) Burden of proof in civil penalty proceedings. In civil penalty proceedings, the department shall have the burden of going forward to establish a prima facie case as to the fact of the violation, the amount of the civil penalty, and the ultimate burden of persuasion as to the amount of the civil penalty. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

(6) Summary disposition.

(A) In a civil penalty proceeding in which the person against whom the proposed civil penalty is assessed fails to comply on time with any prehearing order of a presiding officer, the presiding officer shall issue an order to show cause for the following conditions:

(i) that person should not be deemed to have waived the person's right to a hearing; and

(ii) the proceedings should not be dismissed and the assessment become final.

(B) If the order to show cause is not satisfied as required, the presiding officer shall order the proceedings summarily dismissed and issue a final order.

(C) When the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person will be deemed to have waived the person's right to a hearing, and the presiding officer may assume for purposes of the assessment the following:

(i) the occurrence of each violation listed in the notice of violation; and

(ii) the truth of any facts alleged in such notice or order.

(D) In order to issue an initial order assessing the appropriate penalty when the person against whom the proposed civil penalty is assessed fails to appear at the hearing, a presiding officer shall either conduct an ex parte hearing or require the department to furnish proposed findings of fact and conclusions of law.

(E) Nothing in this section shall be construed to deprive the person against whom the penalty is assessed of the person's opportunity to have the surface mining section prove the violations charged in open hearing with confrontation and cross-examination of witnesses, except when that person fails to comply with a prehearing order or fails to appear at the scheduled hearing.

(7) Initial order of the presiding officer.

(A) The presiding officer shall incorporate in the presiding officer's

decision concerning the civil penalty, findings of fact on each of the four criteria set forth in K.A.R. 47-5-5a(a)(3) and conclusions of law.

(B)(i) If the presiding officer finds that a violation occurred or that the fact of violation is uncontested, the presiding officer shall establish the amount of the penalty, but in so doing, the presiding officer shall adhere to the point system and conversion table contained in 30 CFR 845.13 and 845.14 adopted by reference in K.A.R. 47-55a(a)(3) and (4), except that the presiding officer may waive the use of such point system where the presiding officer determines that a waiver would further abatement of violations of the state act. However, the presiding officer shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the act.

(ii) If the presiding officer finds that no violation occurred, the presiding officer shall issue an order that the proposed assessment be returned to the petitioner.

(C) If the presiding officer finds that no violation occurred or reduces the amount of the civil penalty below the proposed assessment and if a timely petition for review of the presiding officer's decision is not filed with the secretary or if the secretary refuses to grant the petition, the presiding officer shall order the department to remit the appropriate amount to the person who made the payment within 30 days of receipt of the order finding no violation or reducing the penalty paid.

(D) If the presiding officer increases the amount of the civil penalty above that of the proposed assessment, the presiding officer shall order payment of the appropriate amount within 15 days after the order increasing the civil penalty is mailed.

(8) Appeals.

(A) Any party may petition the secretary to review and reconsider the initial order of a presiding officer concerning an assessment pursuant to K.A.R. 47-4-14a(d) (14) and (16), respectively.

(B) Any party may appeal the final order of the secretary pursuant to the Kansas judicial review act, K.S.A. 77-601 et seq. and amendments thereto. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405c, 49-416a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

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47-5-16 Civil penalties; final assessment and payment of civil penalty. (a) If any person to whom a notice of violation or cessation order is issued fails to request a hearing, the proposed assessment shall become a final order of the secretary. The assessment contained in the final order shall be due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the secretary, the proposed civil penalty assessment shall be held in escrow until completion of the review. Otherwise, subject to subsection (c) of this regulation, the

escrowed funds shall be transferred to the department in payment of the civil penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed civil penalty under these regulations, all or part of the escrowed amount shall be refunded to the person assessed within 30 days of receipt of the order and shall include any interest that has accrued from the date of payment into escrow to the date of the refund.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the department within 15 days after the order is mailed to that person. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405c; effective May 1, 1984; amended May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

Article 6.--PERMIT REVIEW

47-6-1 Permit review. Each permit issued and outstanding during the term of the permit shall be reviewed by the secretary or secretary's designee not later than the middle of that term. Reasonable revision or modification of the permit provisions may be ordered at any time to ensure compliance with the laws and regulations. A copy of the order and the written findings shall be sent to the operator. The order shall be subject to provisions of K.S.A. 49-407(d) and 49-422a. (Authorized by K.S.A. 49-405, 49-410; implementing K.S.A. 49-406 and 49-410; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997.)

47-6-2 Permit revision. (a) An application made by an operator to amend or revise an existing permit shall be submitted at least 60 days before the date on which the operator desires to have the approval of the secretary.

(b) If the application for permit revision contains significant alterations or departures from the method of mining or reclamation operations covered by the original permit, all permit application information, requirements, and procedures shall be met. Whether or not a significant alteration or departure is involved shall be determined by the secretary or secretary's designee on a case-by-case basis upon review, unless a determination is requested in writing by the operator upon or before filing the application. On receiving this request, the operator shall be advised by the secretary or secretary's designee if a significant alteration or departure is involved for the purpose of submitting an application.

(c) Each application for permit revision shall be accompanied by a map, when it is required, that meets the general map requirements of these regulations. The proposed amendment shall be described in detail and supported by the technical data necessary to establish its impact and consequences on the surface coal mining and reclamation operation, the environment, and the public health and safety. Additional information may be requested when necessary to make an evaluation of the impact.

(d) No application for a permit revision shall be approved unless the applicant

demonstrates and the regulatory authority finds that these conditions exist:

(1) the reclamation required by the state act and the regulatory program can be accomplished;

(2) applicable requirements under K.A.R. 47-3-42 (a) (43) pertinent to the revision are met; and

(3) the application for revision complies with all requirements of the state act and the regulatory program.

(e) Any extension to the area covered by the permit, except incidental boundary revisions, shall be made through an application for a new permit.

(Authorized by K.S.A. 49-405, 49-410; implementing K.S.A. 49-406 and 49-410; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997.)

47-6-3 Permit renewals; adoption by reference. (a) Permit renewals, 30 CFR 774.15, as in effect on July 1, 1995 are hereby adopted by reference, except as otherwise indicated in this regulation. Subsection (c)(3) of 30 CFR 774.15 shall be deleted.

(b) The following terms shall be replaced with the indicated terms wherever they appear in the text of the federal regulations adopted by reference under K.A.R. 47-63:

(1) "Subchapter J of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative regulations."

(2) "This chapter" shall be replaced by "these regulations."

(3) "Act" shall be replaced by "state act."

(4) "Part 775 of this chapter" shall be replaced by "K.S.A. 49-407(d), 49-416a, 49-422a, and article 4 of chapter 47 of the Kansas administrative regulations."

(5) "Section 774.13" shall be replaced by "K.A.R. 47-62." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

47-6-4 Permit transfers, assignments, and sales; adoption by reference. (a) Each application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the secretary not later than 30 days after that succession is approved by the secretary.

(b) Transfer, assignment, or sale of permit rights; 30 CFR 774.17 as in effect on July 1, 1995 is adopted by reference except as otherwise indicated in this regulation.

(c) The following terms shall be replaced with the indicated terms wherever they appear in the text of the federal regulations adopted by reference under K.A.R. 47-64:

(1) "This chapter" or "this subchapter" shall be replaced by "these regulations."

(2) "Part 778 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(1) to (8), inclusive."

(3) "Subchapter J of this chapter" shall be replaced by "article 8 of

chapter 47 of the Kansas administrative regulations." (Authorized by K.S.A. 49-405, implementing K.S.A. 49-410; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

47-6-6 Permit conditions; adoption by reference. (a) Permit conditions, 30 CFR 773.17, as in effect on July 1, 1995 are adopted by reference except as otherwise indicated in this regulation.

(b) The following terms shall be replaced with the indicated terms wherever they appear in the text of the federal regulations adopted by reference under subsection (a) of this regulation:

(1) "Subchapter J of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative regulations."

(2) "This chapter" shall be replaced by "these regulations."

(3) "Act" shall be replaced by "state act."

(4) "Parts 840 and 842" shall be replaced by "K.A.R. 47-15-1a."

(5) "Subchapter B or K of this chapter" shall be replaced by "K.A.R. 47-9-4 or K.A.R. 47-9-1."

(6) "Subchapter R of this chapter" or "that subchapter" shall be replaced by "the office." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective, E81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

47-6-7 Permit suspension or revocation. (a) A proceeding to suspend or revoke a permit shall begin with a show cause order issued by the secretary to the permittee. The show cause order shall set forth the following:

(1) a list of the unwarranted or willful violations that contribute to a pattern of violations;

(2) a copy of each order or notice containing one or more of the violations listed;

(3) the basis for determining the existence of a pattern of violations; and

(4) the recommendation that the permit be suspended or revoked and the length and terms of the recommended suspension.

(b) Answer. The permittee shall have 30 days after receipt of the order within which to file an answer.

(c) Contents of answer. The permittee's answer to a show cause order shall set forth the following:

(1) the reasons, in detail, why a pattern of violations does not exist or has not existed, including each reason for contesting the following:

(A) the fact of any violation alleged by the department;

(B) the willfulness of any violation; or

(C) whether or not any violation was caused by the unwarranted failure of the permittee.

(2) each mitigating factor the permittee believes exists in determining the terms of the revocation or the length and terms of the suspension;

(3) any other alleged relevant facts; and

(4) whether or not a hearing on the show cause order is desired.

(d) Burden of proof in suspension or revocation proceedings. In proceedings to suspend or revoke a permit, the department shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The permittee shall have the ultimate burden of persuasion that the permit should not be suspended or revoked.

(e) Procedure. Except as provided for in this regulation, the procedure set forth in K.A.R. 47-4-14a(d) shall be followed.

(f) Decision by the presiding officer.

(1) After determining that a pattern of violations exists or has existed, the presiding officer shall order the permit either suspended or revoked. It shall not be required that the presiding officer find that all the violations listed in the show cause order occurred in order to establish a pattern. However, the presiding officer shall find that sufficient violations occurred in order to establish a pattern.

(2) The minimum suspension period imposed shall be three working days, except when the presiding officer finds that this would result in manifest injustice and would not further the purposes of the act. The presiding officer may impose preconditions to lifting the suspension.

(3) The decision of the presiding officer shall be issued within 20 days of the following:

(A) after the closing date of the hearing record; or

(B) after receipt of the answer, if no hearing is requested by any party and the presiding officer determines that no hearing is necessary.

(4) At any stage of a suspension or revocation proceeding, the parties may enter into a settlement, subject to the approval of the presiding officer.

(g) Summary judgment. When the permittee fails to appear at a hearing, these conditions apply:

(1) the permittee shall be deemed to have waived his right to a hearing;

(2) the presiding officer may make these assumptions for purposes of the proceeding:

(A) each violation listed in the order occurred;

(B) each violation was willfully or negligently caused by the permittee; and

(C) a pattern of violations exists.

(3) the presiding officer shall either conduct an ex parte hearing or require the department to furnish proposed findings of fact and conclusions of law in order to issue an initial decision.

(h) Appeals.

(1) Any party may appeal the initial order by filing a notice of appeal with the secretary within 15 days after receipt of the order.

(2) Except as provided for in this regulation, this appeal shall follow the procedure in K.A.R. 47-414(a)(d)(14). The secretary shall act immediately to issue an expedited briefing schedule. The decision of the secretary shall be issued within 60 days after the date the record is closed by the secretary or, the date the answer is filed.

(3) Any further appeal from the secretary's final order shall be taken

pursuant to the Kansas judicial review act, K.S.A. 77-601 et seq. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406; effective Feb. 11, 1991; amended May 2, 1997.)

47-6-8 Termination of jurisdiction; adoption by reference. (a) Applicability, 30 CFR 700.11, as in effect on July 1, 1995, is adopted by reference except as otherwise indicated in this regulation, and subsections (a)(1) and (b) of 30 CFR 700.11 shall be deleted.

(b) The following terms shall be replaced with the indicated terms wherever they appear in the text of the federal regulations adopted by reference under K.A.R. 47-68(a).

(1) "The State or Federal program counterpart to Part 800 of this chapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative regulations."

(2) "This chapter" shall be replaced by "these regulations."

(3) "Subchapter B of this chapter" shall be replaced by "K.A.R. 47-9-4."

(4) "Part 707 of this chapter" shall be replaced by "K.A.R. 47-6-8."

(Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997.)

47-6-9 Exemption for coal extraction incident to government-financed highway or other construction; adoption by reference. (a) The following regulations as in effect on July 1, 1995 are adopted by reference except as otherwise indicated in this regulation:

(1) responsibility, 30 CFR 707.4;

(2) definitions, 30 CFR 707.5;

(3) applicability, 30 CFR 707.11; and

(4) information to be maintained on site, 30 CFR 707.12.

(b) The following terms shall be replaced with the indicated terms wherever they appear in the text of the federal regulations adopted by reference under K.A.R. 47-69(a):

(1) "Act" shall be replaced by "state act."

(2) "This chapter" shall be replaced by "these regulations."

(3) "Parts 707.12" shall be replaced by "K.A.R. 47-6-9 (d)."

(Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997.)

47-6-10 Exemption for coal extraction incidental to the extraction of other minerals; adoption by reference. (a) The following regulations as in effect on July 1, 1995 are adopted by reference except as otherwise indicated in this regulation:

(1) scope, 30 CFR 702.1;

(2) definitions, 30 CFR 702.5;

(3) information collection, 30 CFR 702.10;

(4) application requirements and procedures, 30 CFR 702.11;

(5) contents of application for exemption, 30 CFR 702.12;

(6) public availability of information, 30 CFR 702.13;

(7) requirements for exemption, 30 CFR 702.14;

- (8) conditions of exemption and right of inspection and entry, 30 CFR 702.15;
- (9) stockpiling of minerals, 30 CFR 702.16;
- (10) revocation and enforcement, 30 CFR 702.17; and
- (11) reporting requirements, 30 CFR 702.18.

(b) The following terms shall be replaced with the indicated terms wherever they appear in the text of the federal regulations adopted by reference under K.A.R. 47-610(a):

- (1) "Act" shall be replaced by "state act."
- (2) "This chapter" shall be replaced by "these regulations."
- (3) "43 CFR 4.1280" shall be replaced by "K.A.R. 47-414a."
- (4) "Section 701(28)" shall be replaced by "K.S.A. 49431." (Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997.)

Article 7.--COAL EXPLORATION

47-7-2 Coal exploration; adoption by reference. (a) The following regulations as in effect on July 1, 1995 are adopted by reference, except as otherwise indicated in this regulation:

- (1) notice requirements for exploration removing 250 tons of coal or less, 30 CFR 772.11;
- (2) permit requirements for exploration removing more than 250 tons of coal or occurring on lands designated as unsuitable for surface coal mining operations, 30 CFR 772.12;
- (3) coal exploration compliance duties, 30 CFR 772.13;
- (4) commercial use or sale, 30 CFR 772.14; and
- (5) public availability of information, 30 CFR 772.15.

(b) The following terms shall be replaced with the indicated terms wherever they appear in the text of the federal regulations adopted by reference under K.A.R. 47-72 (a):

- (1) "Part 815 of this chapter" shall be replaced by "K.A.R. 47-9-1(b)."
- (2) "This chapter" shall be replaced by "these regulations."
- (3) "Subchapter F of this chapter" shall be replaced by "article 12 of chapter 47 of the Kansas administrative regulations."
- (4) "Part 775" shall be replaced by "K.S.A. 49-407(d), 49-416a, 49-422a, and article 4 of chapter 47 of the Kansas administrative regulations."
- (5) "Section 518 of the act" shall be replaced by "K.S.A. 49-405c."
- (6) "Subchapter 1" shall be replaced by "articles 5 and 15 of chapter 47 of the Kansas administrative regulations."
- (7) "Parts 773-785 of this chapter" shall be replaced by "articles 3, 4, 6, and 10 of chapter 47 of the Kansas administrative regulations, K.S.A. 49-407(d), 49-416a, and 49-422a."
- (8) "Section 518 of the act, and subchapter 1 of this chapter," shall be replaced by "K.S.A. 49-405c and article 5 of chapter 47 of the Kansas administrative regulations."
- (9) "This part" shall be replaced by "K.A.R. 47-7-2." (Authorized by

K.S.A. 49-405; implementing K.S.A. 49427; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997.)

Article 8.--BONDING PROCEDURES

47-8-9 Bonding procedures; adoption by reference. (a) The following regulations as in effect on July 1, 1995 are adopted by reference except as otherwise indicated in this regulation:

- (1) regulatory authority responsibilities, 30 CFR 800.4;
- (2) definitions, 30 CFR 800.5, deleting subsection (c);
- (3) requirement to file a bond, 30 CFR 800.11, deleting subsection (e);
- (4) form of the performance bond, 30 CFR 800.12, deleting subsection (c);
- (5) period of liability, 30 CFR 800.13;
- (6) determination of bond amount, 30 CFR 800.14;
- (7) adjustment of amount, 30 CFR 800.15;
- (8) general terms and conditions of bond, 30 CFR 800.16;
- (9) bonding requirements for underground coal mines and long-term coal-related surface facilities and structures, 30 CFR 800.17;
- (10) surety bonds, 30 CFR 800.20;
- (11) collateral bonds, 30 CFR 800.21;
- (12) replacement of bonds, 30 CFR 800.30;
- (13) requirement to release performance bonds, 30 CFR 800.40;
- (14) forfeiture of bonds, 30 CFR 800.50; and
- (15) terms and conditions for liability insurance, 30 CFR 800.60, deleting subsection (d).

(b) The following terms shall be replaced with the indicated terms wherever they appear in the text of the federal regulations adopted by reference under K.A.R. 47-89(a):

- (1) "Act" shall be replaced by "state act."
- (2) "(Under parts 780 and 784 of this chapter)" shall be replaced by "[under K.A.R. 47-3-42(a)(17) through (35), inclusive, and K.A.R. 47-10-1]."
- (3) "This chapter" or "subchapter G of this chapter" shall be replaced by "these regulations."
- (4) "This subchapter" shall be replaced by "article 8 of chapter 47 of the Kansas administrative regulations."
- (5) "Section 515 of the act" or "section 515(b)(10)" shall be replaced by "K.S.A. 49-405a, K.S.A. 49-408 through K.S.A. 49-413, inclusive, K.S.A. 49-429, and the regulations promulgated thereunder."
- (6) "Subchapter K of this chapter" shall be replaced by "article 9 of chapter 47 of the Kansas administrative regulations."
- (7) "Section 507(b)(16) of the act" shall be replaced by "K.S.A. 49-407(c)."
- (8) "Part 823 of this chapter" shall be replaced by "K.A.R. 47-9-1(f)."
- (9) "Section 513(b) of the act" shall be replaced by "K.S.A. 49-407(d) and

the regulations promulgated thereunder."

(10) "Application" shall be replaced by "complete and accurate application." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-406, 49-407, and 49-429; effective, E81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

47-8-11 Use of forfeited bond funds. Funds collected from any bond forfeiture may only be used to perform the following:

(a) complete the reclamation plan on the permit area on which bond was made for the surface mining operation for coal; and

(b) cover associated administrative expenses. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-420; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

State of Kansas

Article 9.--PERFORMANCE STANDARDS

47-9-1 Adoption by reference. The following regulations as in effect on July 1, 1995 are adopted by reference, except as otherwise indicated in this regulation:

(a) The following portions of the permanent program performance standards--general provisions, 30 CFR Part 810 are hereby adopted by reference:

(1) objective, 30 CFR 810.2, except "subchapter" shall be replaced by "K.A.R. 47-9-1(a)";

(2) responsibility, 30 CFR 810.4, delete part "a";

(3) applicability, 30 CFR 810.11, except "parts 815 through 828" shall be replaced by their counterpart in "K.A.R. 47-9-1";

(4) "subchapter" shall be replaced by "K.A.R. 47-91(a)"; and

(5) "every state program" and "the applicable regulatory program" shall be replaced by "the regulatory program."

(b) The following portions of the permanent program performance standards--coal exploration, 30 CFR Part 815 are hereby adopted by reference:

(1) required documents, 30 CFR 815.13; and

(2) performance standards for coal exploration, 30 CFR 815.15.

(c) Except as provided in subsection (d), the following portions of the permanent program standards--surface mining activities, 30 CFR Part 816 are hereby adopted by reference:

(1) signs and markers, 30 CFR 816.11. A subsection (g) shall be added to 30 CFR 816.11 that reads as follows: "Increment boundary markers. As deemed appropriate by the secretary or secretary's designee to ascertain increment boundaries, increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 49-406(h)";

- (2) "subchapter" shall be replaced by "K.A.R. 47-9-1 (c)";
- (3) casing and sealing of drilled holes: general requirements, 30 CFR 816.13;
- (4) casing and sealing of drilled holes: temporary, 30 CFR 816.14;
- (5) casing and sealing of drilled holes: permanent, 30 CFR 816.15;
- (6) topsoil and subsoil, 30 CFR 816.22: The first paragraph of subsection (d) of 30 CFR 816.22 shall be replaced by the following:

Absent an approved schedule, topsoil and subsoil materials removed under paragraph (a) of this section shall be redistributed within 120 days following rough backfilling and grading in a manner that complies with the following:
- (7) hydrologic-balance protection, 30 CFR 816.41;
- (8) hydrologic balance: water quality standards and effluent limitations, 30 CFR 816.42;
- (9) diversions, 30 CFR 816.43;
- (10) hydrologic balance: sediment control measures, 30 CFR 816.45;
- (11) hydrologic balance: siltation structures, 30 CFR 816.46;
- (12) hydrologic balance: discharge structures, 30 CFR 816.47;
- (13) impoundments, 30 CFR 816.49;
- (14) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 CFR 816.56;
- (15) hydrologic balance: stream buffer zones, 30 CFR 816.57;
- (16) coal recovery, 30 CFR 816.59;
- (17) use of explosives: general requirements, 30 CFR 816.61, except "subchapter" shall not be replaced by K.A.R. 47-9-1 (c), and everything but the statement "all blasting operations shall be conducted under the direction of a certified blaster," shall be deleted from 30 CFR 816.61(c)(1);
- (18) use of explosives: preblasting survey, 30 CFR 816.62;
- (19) use of explosives: blasting schedule, 30 CFR 816.64;
- (20) use of explosives: blasting signs, warnings, and access control, 30 CFR 816.66;
- (21) use of explosives: control of adverse effects, 30 CFR 816.67;
- (22) use of explosives: records of blasting operations, 30 CFR 816.68;
- (23) disposal of excess spoil: general requirements, 30 CFR 816.71;
- (24) disposal of excess spoil: preexisting benches, 30 CFR 816.74;
- (25) protection of underground mining, 30 CFR 816.79;
- (26) coal mine waste: general requirements, 30 CFR 816.81;
- (27) coal mine waste: refuse piles, 30 CFR 816.83;
- (28) coal mine waste: impounding structures, 30 CFR 816.84;
- (29) coal mine waste: burning and burned waste utilization, 30 CFR 816.87;
- (30) disposal of noncoal mine waste, 30 CFR 816.89;
- (31) stabilization of surface areas, 30 CFR 816.95;
- (32) protection of fish, wildlife, and related environmental values, 30 CFR 816.97;
- (33) slides and other damage, 30 CFR 816.99;
- (34) contemporaneous reclamation, 30 CFR 816.100;
- (35) backfilling and grading: time and distance requirements, 30 CFR 816.101;

(36) backfilling and grading: general requirements, 30 CFR 816.102, deleting subsections (k)(3)(i) and (ii);

(37) backfilling and grading: thin overburden, 30 CFR 816.104;

(38) backfilling and grading: thick overburden, 30 CFR 816.105;

(39) backfilling and grading: previously mined area, 30 CFR 816.106;

(40) revegetation: general requirements, 30 CFR 816.111;

(41) revegetation: timing, 30 CFR 816.113;

(42) revegetation: mulching and other soil-stabilizing practices, 30 CFR 816.114;

(43) revegetation: standards for success, 30 CFR 816.116. A subsection (i) shall be added to 816.116 (c)(4), and a subsection (3) shall be added to 816.116(a).

(A) Subsection (c)(4)(i) shall read `` (i) The regulatory authority may allow 90 days after the issuance of a notice of violation for the repair of any rills or gullies, or both, that may occur. If the rills or gullies, or both, are repaired using normal husbandry practices, approved by the department in consultation with the state conservationist or his designated representative, and the repairs are approved by the department, the period of responsibility shall not be restarted. The normal husbandry practices used to repair gullies shall be approved in advance by the United States department of interior, office of surface mining reclamation and enforcement. If the rills or gullies, or both, are not repaired and approved within 90 days, or if augmented seeding, fertilization, or irrigation was utilized to do the repairs, the regulatory authority will restart the period of liability, effective from the date the repair was completed and approved by the department."

(B) Subsection (a)(3) shall read `` (3) Data being used for bond release shall be submitted to the department annually. This shall include data for the last augmented seeding, which shall start the extended liability period. The following timetable for submissions shall be followed:

(i) the planting reports, including soil tests, shall be submitted by March 31 of the year following the year in which the soil tests were performed;

(ii) the production and ground cover data shall be submitted within 30 days of the date that the production and ground cover were sampled. Ground cover shall include species identification. Raw field data may be submitted at this time to fulfill this requirement. The tabulated results shall then be submitted by March 31 of the following year; and

(iii) all data shall be clearly identified as to the bond release management area that it represents."

(44) cessation of operations: temporary, 30 CFR 816.131;

(45) cessation of operations: permanent, 30 CFR 816.132;

(46) postmining land use, 30 CFR 816.133, deleting subsection (d);

(47) roads: general, 30 CFR 816.150;

(48) primary roads, 30 CFR 816.151;

(49) utility installations, 30 CFR 816.180;

(50) support facilities, 30 CFR 816.181;

(51) interpretative rules related to general performance standards, 30 CFR 816.200; and

(d) The following federal regulations shall be deleted entirely from 30 CFR Part 816;

(1) disposal of excess spoil: valley fills/head-of-hollow fills, 30 CFR 816.72;

(2) disposal of excess spoil: durable rock fills, 30 CFR 816.73; and

(3) backfilling and grading: steep slopes, 30 CFR 816.107.

(e) The following portions of the permanent program performance standards--underground mining activities, 30 CFR Part 817 are hereby adopted by reference:

(1) signs and markers, 30 CFR 817.11. A subsection (g) shall be added to 30 CFR 817.11 that shall read as follows: ``Increment boundary markers. Increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 49406(h)";

(2) ``subchapter" shall be replaced by ``K.A.R. 47-91(d)";

(3) casing and sealing of exposed underground openings: general requirements, 30 CFR 817.13;

(4) casing and sealing of underground openings: temporary, 30 CFR 817.14;

(5) casing and sealing of underground openings: permanent, 30 CFR 817.15;

(6) topsoil and subsoil, 30 CFR 817.22;

(7) hydrologic-balance protection, 30 CFR 817.41;

(8) hydrologic balance: water quality standards and effluent limitations, 30 CFR 817.42;

(9) diversions, 30 CFR 817.43;

(10) hydrologic balance: sediment control measures, 30 CFR 817.45;

(11) hydrologic balance: siltation structures, 30 CFR 817.46;

(12) hydrologic balance: discharge structures, 30 CFR 817.47;

(13) impoundments, 30 CFR 817.49;

(14) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 CFR 817.56;

(15) hydrologic balance: stream buffer zone, 30 CFR 817.57;

(16) coal recovery, 30 CFR, 817.59;

(17) use of explosives: general requirements, 30 CFR 817.61, except ``Subchapter" shall not be replaced by K.A.R. 47-9-1(d), and everything but the statement ``All blasting operations shall be conducted under the direction of a certified blaster." shall be deleted from 30 CFR 817.61(c)(1);

(18) use of explosives: preblasting survey, 30 CFR 817.62;

(19) use of explosives: general performance standards, 30 CFR 817.64;

(20) use of explosives: blasting signs, warnings, and access control, 30 CFR 817.66;

(21) use of explosives: control of adverse effects, 30 CFR 817.67;

(22) use of explosives: records of blasting operations, 30 CFR 817.68;

(23) disposal of excess spoil: general requirements, 30 CFR 817.71;

(24) disposal of excess spoil; preexisting benches, 30 CFR 817.74;
(25) coal mine waste: general requirements, 30 CFR 817.81;
(26) coal mine waste: refuse piles, 30 CFR 817.83;
(27) coal mine waste: impounding structures, 30 CFR 817.84;
(28) coal mine waste: burning and burn waste utilization, 30 CFR 817.87;
(29) disposal of noncoal mine wastes, 30 CFR 817.89;
(30) stabilization of surface areas, 30 CFR 817.95;
(31) protection of fish, wildlife, and related environmental values, 30 CFR 817.97;

(32) slides and other damage, 30 CFR 817.99;
(33) contemporaneous reclamation, 30 CFR 817.100;
(34) backfilling and grading: general requirements, 30 CFR 817.102;
(35) backfilling and grading: previously mined areas, 30 CFR 817.106;
(36) revegetation: general requirements, 30 CFR 817.111;
(37) revegetation: timing, 30 CFR 817.113;
(38) revegetation: mulching and other soil-stabilizing practices, 30 CFR 817.114;

(39) revegetation: standards for success, 30 CFR 817.116. A subsection (3) shall be added to 817.116(a). Subsection (a)(3) shall read `` (3) Data being used for bond release shall be submitted to the department annually. This shall include data for the last augmented seeding, which shall start the extended liability period. The following timetable for submissions shall be followed:

(i) The planting reports, including soil tests, shall be submitted by March 31 of the year following the year in which the soil tests were performed;
(ii) The production and ground cover data shall be submitted within 30 days of the date that the production and ground cover were sampled. Ground cover shall include species identification. Raw field data may be submitted at this time to fulfill this requirement. The tabulated results shall then be submitted by March 31 of the following year; and
(iii) All data shall be clearly identified as to the bond release management area that it represents."

(40) subsidence control, 30 CFR 817.121;
(41) subsidence control: public notice, 30 CFR 817.122;
(42) cessation of operations: temporary, 30 CFR 817.131;
(43) cessation of operations: permanent, 30 CFR 817.132;
(44) postmining land use, 30 CFR 817.133, deleting subsection (d);
(45) roads: general, 30 CFR 817.150;
(46) primary roads, 30 CFR 817.151;
(47) utility installations, 30 CFR 817.180;
(48) support facilities, 30 CFR 817.181;
(49) interpretative rules related to general performance standards, 30 CFR 817.200; and

(50) the following federal regulations shall be deleted entirely:
(A) disposal of excess spoil: valley fills/head-of-hollow fills, 30 CFR 817.72;

- (B) disposal of excess spoil: durable rock fills, 30 CFR 817.73; and
- (C) backfilling and grading: steep slopes, 30 CFR 817.107.
- (f) The following portions of the special permanent program performance standards--auger mining, 30 CFR Part 819 are hereby adopted by reference:
 - (1) auger mining: general, 30 CFR 819.11;
 - (2) auger mining: coal recovery, 30 CFR 819.13;
 - (3) auger mining: hydrologic balance, 30 CFR 819.15;
 - (4) auger mining: subsidence protection, 30 CFR 819.17;
 - (5) auger mining: backfilling and grading, 30 CFR 819.19; and
 - (6) auger mining: protection of underground mining, 30 CFR 819.21.
- (g) The following portions of the special permanent program performance standards--operations on prime farmland, 30 CFR Part 823 are hereby adopted by reference;
 - (1) responsibilities, 30 CFR 823.4;
 - (2) applicability, 30 CFR 823.11, deleting subsection (a);
 - (3) soil removal and stockpiling, 30 CFR 823.12;
 - (4) soil replacement, 30 CFR 823.14; and
 - (5) revegetation and restoration of soil productivity, 30 CFR 823.15.
- (h) The following portions of the permanent program performance standards--coal preparation plants not located within the permit area of a mine, 30 CFR Part 827 are hereby adopted by reference:
 - (1) general requirements, 30 CFR 827.11;
 - (2) coal preparation plants: performance standards, 30 CFR 827.12; and
 - (3) coal preparation plants: interim performance standards, 30 CFR 827.13.
- (i) The following portions of the special permanent program performance standards--in situ processing, 30 CFR Part 828 are hereby adopted by reference:
 - (1) in situ processing: performance standards, 30 CFR 828.11; and
 - (2) in situ processing: monitoring, 30 CFR 828.12.
- (j) The following terms shall be replaced with the indicated terms wherever they appear in the text of the regulations adopted by reference under K.A.R. 47-9-1:
 - (1) "Subchapter K" shall be replaced by "K.A.R. 47-9-1."
 - (2) "Director" or "regional director" shall be replaced by "secretary."
 - (3) "Subchapter G" shall be replaced by "these rules and regulations."
 - (4) "Subchapter J" shall be replaced by "article 8 of chapter 47 of the Kansas administrative rules and regulations."
 - (5) "Subchapter B of this chapter" shall be replaced by "K.A.R. 47-9-4."
 - (6) "This part" or "30 CFR Parts 816 through 828" shall be replaced by "K.A.R. 47-9-1."
 - (7) "This chapter" or "subchapter C" shall be replaced by "these rules and regulations."
 - (8) "Part 816" shall be replaced by "K.A.R. 47-9-1(c)."
 - (9) "Part 817" shall be replaced by "K.A.R. 47-9-1(d)." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-408, 49-409, 49-411, 49-413, 49-415, 49-429; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended

May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997.)

47-9-2 Revegetation. The permittee may be requested by the secretary or secretary's designee to cut the vegetative cover, remove rocks that are nine inches or larger, or carry out any other measures that promote the control and revegetation of the permit area, consistent with the approved postmining land use. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-409; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

47-9-4 Interim performance standards; adoption by reference. (a) The following regulations as in effect on July 1, 1995 are adopted by reference except as indicated in this regulation:

- (1) definitions, 30 CFR 710.5;
 - (2) applicability, 30 CFR 710.11(a);
 - (3) signs and markers, 30 CFR 715.12;
 - (4) postmining use of land, 30 CFR 715.13;
 - (5) backfilling and grading, 30 CFR 715.14;
 - (6) disposal of excess spoil, 30 CFR 715.15, deleting subsection (c);
 - (7) topsoil handling, 30 CFR 715.16;
 - (8) protection of the hydrologic system, 30 CFR 715.17;
 - (9) dams constructed of or impounding waste material, 30 CFR 715.18;
 - (10) revegetation, 30 CFR 715.20;
 - (11) interpretative rules related to general performance standards, 30 CFR 715.200; and
 - (12) prime farmland, 30 CFR 716.7.
- (b) "This part," "section 716.2 of this chapter," "part 715 of this chapter," or "this chapter" shall be replaced by "these regulations" wherever they appear.

(c) Each operator shall comply with the interim performance standards in an interim permit area, unless the secretary has approved, in writing, that operator's request to adhere to an applicable permanent program performance standard or other applicable substantive regulation. (Authorized by and implementing K.S.A. 49-405; effective May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

Article 10.--UNDERGROUND MINING

47-10-1 Adoption by reference; underground mining. (a) The following regulations as in effect on July 1, 1995 are adopted by reference except as otherwise indicated in this regulation:

- (1) Underground mining permit applications--minimum requirements for information on environmental resources, 30 CFR Part 783:
 - (A) responsibilities, 30 CFR 783.4;
 - (B) general requirements, 30 CFR 783.11;
 - (C) general environmental resources information, 30 CFR 783.12;
 - (D) climatological information, 30 CFR 783.18;

- (E) vegetation information, 30 CFR 783.19;
 - (F) soil resources information, 30 CFR 783.21;
 - (G) maps; general requirements, 30 CFR 783.24; and
 - (H) cross sections, maps, and plans, 30 CFR 783.25;
- (2) underground mining permit applications--minimum requirements for reclamation and operation plan, 30 CFR Part 784:
- (A) responsibilities, 30 CFR 784.4;
 - (B) operation plan: general requirements, 30 CFR 784.11;
 - (C) operation plan: existing structures, 30 CFR 784.12;
 - (D) reclamation plan: general requirements, 30 CFR 784.13;
 - (E) hydrologic information, 30 CFR 784.14;
 - (F) reclamation plan: land use information, 30 CFR 784.15;
 - (G) reclamation plan: siltation structures, impoundments, banks, dams, and embankments, 30 CFR 784.16;
 - (H) protection of public parks and historic places, 30 CFR 784.17;
 - (I) relocation or use of public roads, 30 CFR 784.18;
 - (J) underground development waste, 30 CFR 784.19;
 - (K) subsidence control plan, 30 CFR 784.20;
 - (L) fish and wildlife information, 30 CFR 784.21;
 - (M) geologic information, 30 CFR 784.22;
 - (N) operation plan: maps and plans, 30 CFR 784.23;
 - (O) road systems, 30 CFR 784.24;
 - (P) return of coal processing waste to abandoned underground workings, 30 CFR 784.25;
 - (O) air pollution control plan, 30 CFR 784.25;
 - (R) diversions, 30 CFR 784.29;
 - (S) support facilities, 30 CFR 784.30; and
 - (T) interpretive rules related to general performance standards, 30 CFR 784.200.
- (b) The following terms shall be replaced with the indicated terms wherever they appear in the text of the federal regulations adopted by reference under K.A.R. 4710-1(a):
- (1) ``Subchapter K of this chapter" or ``subchapter K" shall be replaced by ``K.A.R. 47-9-1."
 - (2) ``Subchapter B of this chapter" or ``subchapter B" shall be replaced by ``K.A.R. 47-9-4."
 - (3) ``Section 515 and 516 of the act" shall be replaced by ``K.S.A. 49-405a, 49-408 to 49-413, inclusive, and 49-429."
 - (4) ``Subchapter J of this chapter" or ``subchapter J" shall be replaced by ``article 8 of chapter 47 of the Kansas administrative regulations."
 - (5) ``This chapter" shall be replaced by ``these regulations."
 - (6) ``30 CFR Parts 773 and 775" shall be replaced by ``K.A.R. 47-3-42(a)(42) to (46) and (48), inclusive, K.A.R. 47-6-6, K.S.A. 49-407(d), K.S.A. 49-416a, 49-422a, and article 4 of chapter 47 of the Kansas administrative regulations." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-429;

effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997.)

Article 11.--SMALL OPERATOR

ASSISTANCE PROGRAM 47-11-8 Small operator assistance program; adoption by reference. (a) The following regulations as in effect on July 1, 1995 are adopted by reference, except as otherwise indicated in this regulation:

- (1) definitions, 30 CFR 795.3;
- (2) eligibility for assistance, 30 CFR 795.6;
- (3) filing for assistance, 30 CFR 795.7;
- (4) application approval and notice, 30 CFR 795.8;
- (5) program services and data requirements, 30 CFR 795.9;
- (6) qualified laboratories, 30 CFR 795.10;
- (7) assistance funding, 30 CFR 795.11; and
- (8) applicant liability, 30 CFR 795.12.

(b) The following terms shall be replaced with the indicated terms, wherever they appear in the text of the federal regulations adopted by reference under K.A.R. 4711-8(a):

- (1) "Act" shall be replaced by "state act."
- (2) "This chapter" shall be replaced by "these regulations."
- (3) "This part" shall be replaced by "K.A.R. 47-11-8." (Authorized by K.S.A. 49-405; implementing K.S.A. 49406; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

Article 12.--LANDS UNSUITABLE

FOR SURFACE MINING 47-12-4 Lands unsuitable for surface mining; adoption by reference. (a) The following regulations as in effect on July 1, 1995 are adopted by reference, except as otherwise indicated in this regulation:

- (1) definitions, 30 CFR 761.5;
- (2) areas where mining is prohibited or limited, 30 CFR 761.11, deleting subsection (b);
- (3) procedures, 30 CFR 761.12, deleting subsection (c);
- (4) definitions, 30 CFR 762.5;
- (5) criteria for designating lands as unsuitable, 30 CFR 762.11;
- (6) additional criteria, 30 CFR 762.12, "secretary" shall mean the "secretary of the United States department of interior";
- (7) land exempt from designation as unsuitable for surface coal mining operations, 30 CFR 762.13;
- (8) exploration on land designated as unsuitable for surface coal mining operations, 30 CFR 762.14;
- (9) petitions, 30 CFR 764.13;

(10) initial processing, recordkeeping, and notification requirements, 30 CFR 764.15;

(11) hearing requirements, 30 CFR 764.17;

(12) decision, 30 CFR 764.19;

(13) data base and inventory system requirements, 30 CFR 764.21;

(14) public information, 30 CFR 764.23; and

(15) regulatory authority responsibility for implementation, 30 CFR 764.25.

(b) The following terms shall be replaced with the indicated terms wherever they appear in the text of the federal regulations adopted by reference under K.A.R. 4712-4(a):

(1) "Sections 775.11 and 775.13 of this chapter" shall be replaced by "K.S.A. 49-407(d), 49-416a, 49-422a, and article 4 of chapter 47 of the Kansas administrative regulations."

(2) "Sections 522(a)(2) and (3)" shall be replaced by "K.S.A. 49-405b(a)(1) and (2)."

(3) "This chapter" shall be replaced by "these regulations."

(4) "Section 526(e) of the act and Section 775.13 of this chapter" shall be replaced by "K.S.A. 49-422a and K.S.A. 49-426."

(5) "Section 522 of the act" or "section 522(e) of the act" shall be replaced by "K.S.A. 49-405b."

(6) "Section 701(28) of the act" shall be replaced by "K.S.A. 49-403(s)."

(7) "Part 761, 762, or 764" shall be replaced by "K.A.R. 47-12-4."

(8) "Part 722 of this chapter" shall be replaced by "K.A.R. 47-7-2."

(9) "Act" shall be replaced by "state act."

(10) "This part" or "this subchapter" shall be replaced by "K.A.R. 47-12-4." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405b, 49-422a and 49-426; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997.)

Article 13.--TRAINING, CERTIFICATION,

AND RESPONSIBILITIES OF

BLASTERS AND OPERATORS 47-13-4 Training and certification of blasters; adoption by reference. (a) 30 CFR part 850 as in effect on July 1, 1995 is adopted by reference, except as otherwise indicated in this regulation, and 30 CFR 850.10 and 850.12 shall be deleted.

(b) The following terms shall be replaced with the indicated terms wherever they appear.

(1) "Act" shall be replaced by "state act."

(2) For the purposes of 30 CFR 850.15(a) only, "regulatory authority" shall be replaced by "state fire marshal."

(3) For the purposes of 30 CFR 850.14 only, "regulatory authority" shall be replaced by "secretary-approved blaster training program director."

(c) The term "secretary-approved blaster training program director" means the person who is in charge of a given blaster training program that has been

specifically approved by the secretary as being in accordance with the state act, the rules and regulations, and the state program. (Authorized by and implementing K.S.A. 49-405 and 49-405a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

47-13-5 Responsibilities of operators and blasters in-charge. (a) Each operator shall perform the following:

- (1) designate a blaster-in-charge for each blast to be detonated in surface coal mining and reclamation operations;
- (2) ensure that the designated blaster-in-charge is properly certified;
- (3) ensure that each employee who performs blasting tasks under the supervision of a blaster-in-charge has adequate training;
- (4) limit the size of a blasting crew to 12 persons, supervised by a blaster-in-charge who is continuously and readily accessible to crew members in preparing and executing a blast. A larger blasting crew may be approved by the secretary if these conditions exist:

(A) unusual circumstances or mining methods are involved; and

(B) the operator ensures that the blaster-in-charge can perform the following:

- (i) provide adequate, direct supervision to crew members;
- (ii) remain in control of blast design, preparation, and execution; and
- (iii) assure that blasting complies with the applicable regulations; and
- (5) ensure that each blaster-in-charge shall supervise no more than one crew at any given time.

(b) Each blaster-in-charge shall fulfill these requirements:

- (1) be certified by the state fire marshal for each blasting operation conducted in the state of Kansas;
- (2) ensure that blast design and execution meet the applicable standards;
- (3) directly supervise blast preparation and execution at the blast site to ensure that such standards are met;
- (4) be present at the site when the blast is detonated;
- (5) ensure that each member of each blasting crew has adequate training to perform assigned tasks in compliance with the applicable standards; and
- (6) limit to 12 the number of persons being supervised at any given time in preparing and executing a blast at one operational pit at the site.

(c) After instructions from the blaster-in-charge and under the direct supervision of the blaster-in-charge, members of the blasting crew may engage in these activities:

- (1) perform general blasting operations;
- (2) load and unload explosives for use in blasting;
- (3) transport explosives at or near the job site;
- (4) load explosives into drill holes; and
- (5) stem or otherwise prepare explosives for detonation.

(d) The blaster-in-charge shall retain full responsibility for all blasting and for the use of explosives. These responsibilities shall include the following:

- (1) keeping blasting logs and records;
- (2) supervising the blasting-related activities of the workers over which the supervisor is in charge; and
- (3) ensuring that each person under the supervisor's charge has the training necessary to perform the person's assigned tasks safely and in accordance with the applicable regulations. (Authorized by K.S.A. 49-405 and 49405a; implementing K.S.A. 49-405; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

47-13-6 Training. (a) Each person seeking a blaster certification pursuant to K.A.R. 47-13-4 shall document successful completion of a department-approved blaster training program.

(b) Proof of completion of an approved blaster training program shall be filed with an applicant's application for certification by the state fire marshal. (Authorized by and implementing K.S.A. 49-405 and 49-405a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

Article 14.--EMPLOYEE FINANCIAL

INTERESTS 47-14-7 Employee financial interest; adoption by reference. (a) The following regulations as in effect on July 1, 1995 are adopted by reference, except as otherwise indicated in this regulation:

- (1) responsibility, 30 CFR 705.4(a) and (c), deleting subsection (b);
- (2) penalties, 30 CFR 705.6(b), deleting subsection (a);
- (3) who shall file, 30 CFR 705.11(a), (b), (c), and (d), deleting subsection (e);
- (4) when to file, 30 CFR 705.13;
- (5) where to file, 30 CFR 705.15;
- (6) what to report, 30 CFR 705.17;
- (7) gifts and gratuities, 30 CFR 705.18;
- (8) resolving prohibited interests, 30 CFR 705.19(a), deleting subsection (b); and
- (9) appeals procedures, 30 CFR 705.21;

(b) The following terms shall be replaced with the indicated terms wherever they appear.

- (1) "Act" shall be replaced by the term "state act."
- (2) "Head of each state regulatory authority," and "head of the state regulatory authority" shall be replaced by the term "secretary of the Kansas department of health and environment." (Authorized by K.S.A. 49-404; implementing K.S.A. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

Article 15.--INSPECTION AND

ENFORCEMENT 47-15-1a Inspection and enforcement; adoption by reference. (a) The following regulations as in effect on July 1, 1995 are adopted by

reference, except as otherwise indicated in this regulation:

- (1) inspections by state regulatory authority, 30 CFR 840.11;
 - (2) availability of records, 30 CFR 840.14;
 - (3) definitions, 30 CFR 843.5;
 - (4) right of entry, 30 CFR 840.12;
 - (5) review of adequacy and completeness of inspections, 30 CFR 842.14;
 - (6) review of decision not to inspect or enforce, 30 CFR 842.15, except that the phrase in subsection (b) of 30 CFR 842.15, "or disclosure is required under the freedom of information act or other federal law," shall be deleted;
 - (7) cessation orders, 30 CFR 843.11;
 - (8) notices of violations, 30 CFR 843.12, except for the following:
 - (A) the phrase in subsection (a) of 30 CFR 843.12, "carried out during the enforcement of a federal program or federal lands program or during federal enforcement of a state program under sections 504(b) or 521(b) of the act and part 733 of this chapter" shall be deleted; and
 - (B) paragraph (a)(2) of 30 CFR 843.12 shall be deleted;
 - (9) suspension or revocation of permits: pattern of violations, 30 CFR 843.13, except that the phrase in paragraph (a)(4)(i)(A) of 30 CFR 843.13, "or a federal lands program," and paragraphs (a)(4)(i)(B) and (C) of 30 CFR 843.13 shall be deleted;
 - (10) informal public hearings, 30 CFR 843.15;
 - (11) formal review of citations, 30 CFR 843.16;
 - (12) compliance conference, 30 CFR 843.20; and
 - (13) compliance conference, 30 CFR 840.16.
- (b) The following terms shall be replaced with the indicated terms wherever they appear.
- (1) "Act" shall be replaced by "state act."
 - (2) "This chapter" shall be replaced by "these regulations."
 - (3) "Federal" shall be replaced by "state."
 - (4) "Office" shall be replaced by "secretary or secretary's designee."
 - (5) "Regional director" shall be replaced by "secretary."
 - (6) "43 CFR Part 4" shall be replaced by "K.A.R. 47-414a."
 - (7) "Office of hearings and appeals" shall be replaced by "department."
 - (8) "30 CFR Part 845" shall be replaced by "article 5 of chapter 47 of the Kansas administrative rules and regulations."
 - (9) "43 CFR 4.1281" shall be replaced by "K.A.R. 47-414a (a)(1) -(8)."
 - (10) "Section 521(a)(5)" shall be replaced by "K.S.A. 49-405(m)(4)."
 - (11) "Section 521(a)(2)" shall be replaced by "K.S.A. 49-405(m)(1)."
 - (12) "Section 517" shall be replaced by "K.S.A. 49-404, 49-405, and 49-405d."
 - (13) "Section 518" shall be replaced by "K.S.A. 49-405c."
 - (14) "Section 521" shall be replaced by "K.S.A. 49-405(m)."
 - (15) "Section 518(b), 521(a)(4), or 525" shall be replaced by "K.S.A. 49-405c(b), 49-405(m)(3), or 49-416a, respectively."
 - (16) "30 CFR 842.12" or "842.12" shall be replaced by "K.A.R. 47-15-7 and

K.A.R. 47-15-8."

(17) ``Section 520" shall be replaced by ``K.S.A. 49426."

(18) ``Section 525" shall be replaced by ``K.S.A. 49416a."

(19) ``30 CFR 842.11" or ``section 842.11" shall be replaced by ``K.A.R. 47-15-1a(a)(1)."

(20) ``Director" shall be replaced by ``secretary."

(21) ``30 CFR 843.15(e)" shall be replaced by ``An informal public hearing shall be conducted in accordance with K.A.R. 47-4-14a." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-404, 49-405, 49-405c, 49-405d, 49406, 49-416, 49-416a, and 49-427; effective May 1, 1985; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997.)

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47-15-3 Lack of information; inability to comply. (a) A notice of violation, cessation order, show cause order, or order revoking or suspending a permit shall not be vacated because it is subsequently determined that the secretary did not have information sufficient to justify an inspection.

(b) A notice of violation or cessation order shall not be vacated because of inability to comply.

(c) Inability to comply shall not be considered in determining whether or not a pattern of violation exists.

(d) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of the civil penalty and the duration of the suspension of a permit. (Authorized by K.S.A. 49-405, 49-405c; implementing K.S.A. 49-405 and 49-405c; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

47-15-4 Injunctive relief. The attorney general may be requested by the secretary to institute any civil action for relief, including a permanent or temporary injunction, and a restraining order or any other order, whenever, in violation of the state act, these regulations, or any condition of an exploration approval or permit, anyone does the following:

(a) violates, fails to comply with, or refuses to comply with any order or decision of the secretary or secretary's designee;

(b) interferes with, hinders, or delays the secretary or secretary's designee in carrying out provisions of the state act or these regulations; or

(c) refuses to perform the following:

(1) admit the secretary or secretary's designee to a mine;

(2) permit inspection of a mine by the secretary or secretary's designee;

(3) furnish any required information or report;

(4) permit access to or copying of any required records; or

(5) permit inspection of monitoring equipment. (Authorized by and implementing K.S.A. 49-405; effective, E81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997.)

47-15-7 State inspections. (a) Inspection of surface coal mining and

reclamation operations shall be conducted by the secretary or secretary's designee as necessary to determine whether or not the permittee has complied with any notice of violation or cessation order issued during an inspection authorized under this regulation.

(b) A state inspection shall be conducted immediately by the secretary or secretary's designee to enforce any requirement of the state act, these regulations, the regulatory program, or any condition of a permit or an exploration approval.

(c) Appropriate action to have the violation abated shall be taken by the secretary or secretary's designee when, on the basis of information available to the department other than information available to the department other than information resulting from a previous state inspection, the secretary or secretary's designee has reason to believe that either of the following has occurred:

(1) the permittee has violated the state act, these regulations, the regulatory program, or any condition of a permit or an exploration approval; or

(2) any condition, practice, or violation creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405d; effective May 1, 1984; amended Feb. 11, 1991; amended May 2, 1997.)

47-15-8 Citizen's requests for state inspections. (a) Any person may request a state inspection under K.A.R. 47-15-7(b) by furnishing the secretary or secretary's designee with a signed, written statement or an oral report followed by a signed, written statement. The statement shall include the following:

(1) the reasons that the person believes a violation, condition, or practice referred to in K.A.R. 47-15-7(b) exists; and

(2) a phone number and address at which the person can be contacted.

(b) Upon request by the person, the identity of any person supplying information to the secretary or secretary's designee relating to a possible violation or imminent danger or harm shall remain confidential, unless that person accompanies the inspector on the inspection.

(c) If a state inspection is conducted as a result of information provided to the secretary or secretary's designee as described in subsection (a) of this regulation, the person requesting the inspection shall be notified as far in advance as practicable as to when the inspection will occur. The person may accompany the secretary or secretary's designee. During the inspection, the person shall have a right of entry to, upon, and through the coal exploration or surface coal mining and reclamation operation about which that person supplied information. However, the person shall be in the presence of and under the control, direction, and supervision of the secretary or secretary's designee while on the mine property. This right of entry shall not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within 10 days after the state inspection or, if there is no inspection, within 15 days after receipt of the person's written statement, the secretary or secretary's designee shall send the person the following:

(1)(A) If an inspection was conducted, a description of the enforcement action taken. This description may consist of copies of the state inspection report and of all notices of violation and cessation orders issued as a result of the inspection or an explanation as to why no enforcement action was taken; or (B) if no state inspection was conducted, an explanation of the reason why an inspection was not considered to be necessary; and

(2) an explanation of the person's right, if any, to informal review of the action or inaction of the secretary or secretary's designee under K.A.R.

47-15-1a(a)(6).

(e) Copies of all materials in paragraphs (d)(1) and (d)(2) of this regulation shall be given by the secretary or secretary's designee to the person alleged to be in violation within the time limits specified in those paragraphs. However, the name of the person requesting the inspection shall be removed unless disclosure of the person's identity is permitted under subsection (b) of this regulation. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405d; effective May 1, 1984; amended May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

47-15-15 Service of notices of violations and cessation orders. (a) Promptly after issuance, each notice of violation or cessation order shall be served on the person to whom it is directed or to that person's designated agent, as follows:

(1)(A) A copy of each notice of violation or cessation order may be tendered, at the coal exploration or surface coal mining and reclamation operation, to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the notice or order.

(B) If no one in charge can be found, the copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued.

(C) Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2)(A) In the alternative, service may be made by sending a copy of the notice or order by certified mail or by delivering the copy by hand to the person to whom it is issued or to the person's designated agent.

(B) Service shall be complete upon tender of the notice or order or upon certified mailing of the notice or order, and service shall not be deemed incomplete because of refusal to accept.

(b) A show cause order may be served on the person to whom it is issued in either manner provided in subsection (a) of this regulation.

(c) A person shall make any designation of an agent for service of notices and orders in writing and to the secretary or secretary's designee.

(d) The secretary or secretary's designee may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area, including the owner of the fee, a corporate officer of the permittee or entity conducting coal exploration, or the bonding company. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405d; effective May 1, 1984; amended Feb. 11, 1991; amended May 2, 1997.)

47-15-17 Maintenance of permit areas. The permittee shall be required by the secretary or the secretary's designee to cut vegetative growth, if necessary to facilitate inspection of each permit area in order to insure compliance with the state act and regulations. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405d; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997.)

Article 16.--RECLAMATION

47-16-1 Eligible lands and water. (a) Coal mined lands and associated waters shall be eligible for reclamation activities if these conditions are met:

- (1) they were mined or affected by mining processes;
- (2) they were mined before August 3, 1977, and were left or abandoned in an unreclaimed or inadequately reclaimed condition; and
- (3) there is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the state or federal government or a result of bond forfeiture. Bond forfeiture shall render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation.

(b) Lands and water that were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities if all reclamation with respect to abandoned coal mine land and water has been accomplished within the state.

(c) "Left or abandoned in an unreclaimed or inadequately reclaimed condition" means land and water that meet the following conditions:

- (1) were mined or affected by such mining, wastebanks, processing, or other mining processes before August 3, 1977, and on which all mining has ceased;
- (2) continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and
- (3) are not subject to any continuing reclamation responsibility under state or federal laws. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-2 Reclamation project evaluation. Proposed reclamation projects and completed reclamation work shall be evaluated using the factors stated in this section to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the objectives of K.S.A. 49-428. Completed reclamation shall be evaluated using the following factors to identify conditions that should be avoided, corrected, or improved in plans for

future reclamation work:

(a) the need for reclamation work to accomplish one or more specific objectives stated in K.S.A. 49-428;

(b) the availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts;

(c) the specific benefits of the reclamation work for the area including the following:

(1) protection of human life, health, or safety;

(2) protection of the environment, including air and water quality, fish and wildlife, plant habitat, visual beauty, historic, cultural or recreation resources, and abatement of erosion sedimentation;

(3) protection of public or private property;

(4) improvement of environmental conditions that may be considered to generally enhance the quality of human life;

(5) improvement of natural resource use, including:

(A) increasing productivity capability of the land;

(B) enhancing the use of surrounding lands consistent with existing land use plans;

(C) providing for construction or enhancement of public facilities; and

(D) providing for residential, commercial, or industrial developments consistent with the needs and plans of the community in which the site is located; and

(6) technologies that can be used to reclaim areas disturbed by mining;

(d) any additional adverse impacts to people or the environment during or after reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation;

(e) the costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation;

(f) any additional coal or other mineral or material resources within the project area when either of the following conditions exists:

(1) a reasonable probability that the desired reclamation could be accomplished in conjunction with future mining; or

(2) a need to assure that the resource is not lost as a result of reclamation and the benefits of reclamation are not negated by subsequent, essential resource recovery operations;

(g) compatibility of post-reclamation land uses with the following:

(1) land uses in the surrounding area;

(2) applicable state, regional, and local land use plans and laws; and

(3) the needs and desires of the community where the project is located; and

(h) the probability that post-reclamation management, maintenance and control of the area will be consistent with the reclamation completed. (Authorized by

K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb.

11, 1991; amended May 2, 1997.)

47-16-3 Consent to entry. (a) All reasonable actions that are necessary to obtain prior written consent from the owner of record of the land or property to be entered shall be taken by the secretary or secretary's designee.

(b) The consent shall consist of a signed statement by the owner or the owner's authorized agent that shall include the following:

- (1) a legal description of the land to be entered;
- (2) the nature of work to be performed on the lands; and
- (3) any special conditions for entry.

(c) This statement shall not include any commitment by the secretary to perform reclamation work or compensate the owner for entry. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-432; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-4 Entry for study or exploration. (a) Any property may be entered by the secretary or secretary's designee for the purpose of conducting studies or exploratory work to determine the following:

- (1) the existence of adverse effects of past coal mining practices; and
- (2) the feasibility of restoration, reclamation, abatement, control, or prevention of adverse effects.

(b) If the owner will not give consent to entry, notice shall be given to the owner in writing of the secretary's intent to enter for purposes of study and exploration to determine the existence of adverse effects of past coal mining practices that may be harmful to the public health, safety, or general welfare. The notice shall be provided by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the owner is not known, or if the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public. In addition, the notice shall be published once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-432; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-5 Entry and consent to reclaim. (a) Notice shall be given of the secretary's intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by K.S.A. 49-432. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public. In addition, the notice shall be published once in a newspaper of general circulation in the locality in which the land is located. The notice shall include a statement of where the findings required by K.S.A. 49-432 may be inspected or obtained.

(b) Any land where an emergency exists and on any other land necessary to

gain access to the land where an emergency exists may be entered by the secretary to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices and to do all things necessary to protect the public health, safety, or general welfare.

(1) Before entry a written finding shall be made by the secretary with reasons supporting the following conclusions:

(A) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(B) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

(2) Notice to the owner shall not be required before entry for emergency reclamation. Reasonable efforts to notify the owner and obtain prior consent shall be made by the secretary. These efforts shall be consistent with the existing emergency conditions. Proper written notice shall be given to the owner as soon after entry as practical. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-432; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-6 Liens. (a) A lien shall be placed by the secretary on land reclaimed if the reclamation results in a significant increase in the fair market value based on the pre- and post-reclamation appraisals, except that the lien may be waived by the secretary or the secretary's designee if these conditions are met:

(1) the lien amount would be less than the cost of filing the lien;

(2) the reclamation work primarily increases the health, safety, or environment of the community or area affected; or

(3) the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore the land will not significantly increase the market value of the land as it existed immediately before the occurrence.

(b) A lien shall not be placed against land reclaimed if the current owner of the property acquired title before May 2, 1977 and did not consent to, participate in, or exercise control over the mining operation that caused or contributed to the unreclaimed conditions.

(c) If a lien is to be filed, within six months after completion of the reclamation work, a statement shall be filed by the secretary in the office having responsibility under applicable law for recording judgments and placing liens against land. The statement shall include the following:

(1) an account of monies expended for the reclamation work; and

(2) a notarized summary of the appraisal report.

(d) The increase in the appraised value of the property shall constitute the amount of the lien recorded and shall have priority second only to a real estate tax lien. The landowner shall be afforded the following:

(1) notified before the time of filing the lien of the amount of the proposed lien; and

(2) allowed a reasonable time to pay that amount in lieu of filing the lien.

(Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1,

1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-7 Appraisals. (a) In order for a lien to be filed under K.A.R.

47-16-6, the following procedures shall be followed. (a) A notarized appraisal of the fair market value of the land shall be obtained from an independent, professional appraiser before any reclamation activities are started.

(b) A second, notarized appraisal of the fair market value of the land shall be obtained after all reclamation activities have been completed.

(c) The landowner shall receive a statement of any increase in market value, an itemized statement of reclamation expenses, and a notice that a lien will be filed against the property. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-8 Satisfaction of liens. (a) A lien shall be satisfied to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this subsection.

(b) Liens shall be maintained or renewed by the secretary from time to time as may be required.

(c) Monies derived from the satisfaction of liens established under this subsection shall be deposited in the state abandoned mined-land fund. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997.)

47-16-9 Contractor responsibility. (a) Each successful bidder for an abandoned mine land reclamation project contract shall be eligible under 30 CFR 773.15(b)(1), as adopted by reference in K.A.R. 47-3-42(a)(44), at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations.

(b) For any contract to be awarded, bidder eligibility shall be confirmed by the office of surface mining's automated application violator system. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2, 1997.)

47-16-10 Exclusion of certain noncoal reclamation sites. (a) Money from the abandoned mine land funds shall not be used for the following:

(1) the reclamation of sites and areas designated for remedial action pursuant to the uranium mill tailings radiation control act of 1978, 42 U.S.C. 7901 et seq. and amendments thereto; or

(2) sites listed for remedial action pursuant to the comprehensive environmental response compensation and liability act of 1980, 42 U.S.C. 9601 et seq. and amendments thereto.

(b)(1) Each successful bidder for an abandoned mine land contract for noncoal reclamation shall be eligible under 30 CFR 773.15(b)(1), as adopted by reference in K.A.R. 47-3-42(a)(44), at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations.

(2) Bidder eligibility shall be confirmed by the office of surface mining's automated applicant violator system for each contract to be awarded.

(Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2,

1997.)

47-16-11 Reports. (a) For each grant, cooperative agreement, or both, the agency shall semiannually submit to the office of surface mining reclamation and enforcement the following reports prepared according to the office of management and budget circular no. A-102, attachment h and i:

(1)(A) a financial status report, form sf-269, for the department's administrative grant, cooperative agreement, or both; and

(B) the performance report, form osm-51, covering the performance aspect of the grant, cooperative agreement, or both; and

(2)(A) the outlay report and request for reimbursement for construction programs, form sf-271; and

(B) the performance report, form osm-51, for each activity or project on which some work has occurred.

(b) For each grant, cooperative agreement, or both, the department shall annually submit to the office of surface mining reclamation and enforcement the following reports prepared according to office of management and budget circular a-102, attachments h and i:

(1)(A) a financial status report, form sf-269, for the department's administrative grant, cooperative agreement, or both; and

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(B) a final performance report, form osm-51, covering the performance aspects of the grant, cooperative agreement, or both; and

(2)(A) an annual outlay report and request reimbursement for construction programs, form sf-271; and

(B) a cumulative annual performance report, form osm-51, that shall include the following:

(i) for each project or activity, a brief description, the type of reclamation performed, the project location, the landowner's name, the amounts of land or water reclaimed or being reclaimed, and a summary of achieved or expected benefits;

(ii) for any land previously acquired but not disposed of, a statement of current or planned uses, location and size in acres, and any revenues derived from use of the land; and

(iii) for any permanent facilities acquired or constructed but not disposed of, a description of the facility and a statement of current or planned uses, location, and revenues derived from the use of the facility.

(c) A form osm-76, ``abandoned mine land problem area description," shall be submitted upon project completion to report the accomplishments achieved through the project. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2, 1997.)

James J. O'Connell
Secretary of Health
and Environment

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